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SUPPLEMENT, 1916
TO
ANNOTATED
CONSOLIDATED LAWS
OF THE
STATE OF NEW YORK

CONTAINING
AMENDMENTS TO CONSOLIDATED LAWS, CODE OF CIVIL PROCEDURE,
AND OTHER GENERAL STATUTES, ENACTED BY THE
LEGISLATURE OF 1916

AND ALSO
DECISIONS OF THE COURTS AND RULINGS OF THE ATTORNEY GENERAL
AND STATE OFFICERS AND COMMISSIONS UNDER THE LAWS
AND CONSTITUTION FROM JULY 1, 1915, TO JULY 1, 1916

[Decisions include those reported during such year down to 241 U. S. 201;
231 Fed. 1023; 118 N. Y. 294; 171 App. Div. 768; 94 Misc. 740; 159
N. Y. Supp. 623, and 7 State Dept. Rep. Adv. Sheet No. 42]

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WILLIAM B. BAKER

CONSTITUTION

Art. I, § 2. Trial by jury.

Exclusion of jury from court room.—A contention that reversible error was committed in excluding the jury from the court room during the argument as to the admissibility of an alleged dying declaration—their exclusion being a violation of the right to a trial by jury guaranteed by the Constitution of the state cannot be upheld, where the argument related solely to a question of law, determinable by the trial judge, and with which the jury had no concern whatever. While it is never error to permit the jury to be present during the discussion of questions of law by counsel, it was not error to exclude the jury under the circumstances of the present case. *People v. Becker* (1915), 215 N. Y. 126.

Art. 1, § 6. Bill of rights.

In jeopardy second time; trial on another indictment after due agreement.—A defendant who has been tried under an indictment resulting in a disagreement of the jury is not placed in jeopardy a second time by the trial of another indictment for the same offense. *People ex rel. Bullock v. Hayes* (1915), 215 N. Y. 172.

Witness against self in criminal case. The compulsory attendance of one accused of crime as a witness in a proceeding wherein the charge is being investigated, not simply the administering an oath, violates his constitutional rights irrespective of whether he is called before a coroner, a committing magistrate or a grand jury. *People v. Ferola* (1915), 215 N. Y. 285.

Art. I, § 19. Workmen's compensation.

Procedure of Workmen's Compensation Commission; presumption as to claims. The fact that the Legislature adopts a peculiar and unusual practice in proceedings before the commission is not an objection to their validity, nor is the provision that a claim shall be presumed to come within the provisions of the act, in the absence of substantial evidence to the contrary, unconstitutional. *McQueeney v. Sutphen & Myer* (1915), 167 App. Div. 528, 153 N. Y. Supp. 554.

See generally, *Herkey v. Agar Manufacturing Co.* (1915), 90 Misc. 457, 153 N. Y. Supp. 369 and cases cited under Workmen's Compensation Law, *post*.

Art. III, § 18. Private and local bills; when not to be passed.

Grant of privilege to construct and maintain railroad.—The Constitution was intended to prohibit the enactment of special legislation which had for its primary and fundamental purpose the grant of privileges to construct and maintain railroads and tracks, and to compel the acquisition of such rights under general and uniform statutes. *McCutcheon v. Terminal Station Commission* (1916), 217 N. Y. 127, 157.

Contract permitting additional pieces of track to be laid held not to contravene this section. *McCutcheon v. Terminal Station Commission* (1916), 217 N. Y. 127, 157.

Art. V, § 9. Civil Service appointments and promotions.

Whether a position shall remain classified as competitive depends upon the practicability of ascertaining merit and fitness by examination. Atty. Gen'l. Opin. (1915), 4 State Dep. Rep. 567.

Art. VI, § 9. Jurisdiction of court of appeals.

See generally, *Matter of Hardy* (1915), 216 N. Y. 132, 136.

Art. VI, § 14; Art. VIII, § 3.

Courts.

Art. VI, § 14. County courts.

Jurisdiction; test of jurisdiction; failure to raise objection before judgment.—Where a complaint states two causes of action, one for wages alleged to have been earned by the plaintiff, and another for damages for a breach of a written contract of employment, and the demand for judgment is “for the sum of two thousand dollars upon both causes of action, with interest, besides the costs and disbursements of the action,” the County Court has no jurisdiction. The test of jurisdiction is not the sum recoverable in the action, but the sum demanded in the complaint. The fact that the objection to the jurisdiction of the court was not raised before judgment, does not estop the defendant from raising it upon appeal. *Halpern v. Langrock Bros. Co.* (1915), 169 App. Div. 464, 155 N. Y. Supp. 167.

Art. VI, § 17. Justices of the peace; district court justices.

Power to remove municipal court justices.—The Municipal Court Code deprives the Supreme Court of the power of removal of the justices of the Municipal Court of the city of New York which it possesses under section 17 of article VI of the Constitution over justices of inferior courts not of record and vests it in the Senate to be exercised in the manner provided by section 11 of article VI of the Constitution. The legislature having power to constitute the Municipal Court of the city of New York a court of record it must be implied that the change effected by the Municipal Court Code legally carries with it a change in regard to the power of removal of the justices of said court as heretofore governed by section 17 of article VI of the Constitution; such construction reconciles the statute and the Constitution. *Scheidlinger v. Silber* (1916), 94 Misc. 322, 158 N. Y. Supp. 27.

Art. VI, § 18. Inferior local courts.

The Municipal Court Code, which constitutes the Municipal Court of the city of New York a court of record, is not violative of the inhibition of section 18 of article VI of the Constitution of 1894 that “No inferior court hereafter created shall be a court of record.” *Scheidlinger v. Silber* (1916), 94 Misc. 322, 158 N. Y. Supp. 27.

The provision of section 6 (1) of the Municipal Court Code (Laws of 1915, chap. 279), which attempts to confer upon the Municipal Court of the city of New York jurisdiction in an action “to take, state and determine an account between partners after dissolution or other termination of their partnership relation, and to render judgment for the amount so found to be due, but in no event for more than one thousand dollars,” is violative of article VI, section 18, of the State Constitution which declares that “The Legislature shall not hereafter confer upon any inferior or local court of its creation any equity jurisdiction or any greater jurisdiction in other respects than is conferred upon County Courts by or under this article.” *Schmitt v. Querengaesser* (1916), 94 Misc. 640, 158 N. Y. Supp. 575.

Art. VI, § 23. Courts of special sessions.

Jurisdiction. *People v. Perrin* (1915), 170 App. Div. 375, 378, 155 N. Y. Supp. 698.

Art. VII, § 4. Limitation of legislative power to create debts.

L. 1913, ch. 801, amending the Barge Canal Act (L. 1903, ch. 147), making private bridges and their franchises subject to condemnation is unconstitutional. *Half-moon Bridge Co. v. Canal Board* (1915), 91 Misc. 600, 155 N. Y. Supp. 602.

Art. VIII, § 3. Corporation; definition of term.

United States Express Company.—It seems, that under this section and the Joint Stock Associations Law, the United States Express Company is, for all practical

Indebtedness; home rule. Art. VIII, § 10; Art. X, § 2.

purposes, a corporation. So held in an action under the United States Corporation Tax Law. *Roberts v. Anderson* (1915), 226 Fed. 7.

Art. VIII, § 10. Limitation of indebtedness of counties, cities, towns and villages.

When objection as to excessive indebtedness, is prematurely raised. By express mandate of the Constitution the question whether a city has become indebted in excess of the prescribed percentage is to be determined by reference to the *assessment rolls of said city on the last assessment for state or county taxes prior to the incurring of such indebtedness*. Where there has never been any assessment rolls of a city, an objection that its charter is unconstitutional in that the indebtedness of the proposed city exceeds ten percentum of the assessed valuation of the real estate therein subject to taxation, is prematurely raised. *People ex rel. Haight v. Brown* (1915), 216 N. Y. 674.

Liability of city for bonded debts of towns and villages composing it. Although this section of the Constitution provides that no county or city shall be allowed to become indebted in excess of ten per centum of the assessed valuation of its real estate, which constitutional limitation does not obtain in the case of villages, the Legislature, in authorizing a village to merge with certain towns and become a city, may provide that the new city shall be liable for the bonded debts of the former towns and village which compose it, although the aggregate thereof exceeds the constitutional limitations placed on cities. After the merger the constitutional prohibition is only effective to prevent the creation of new indebtedness beyond the percentage prescribed. *People ex rel. Haight v. Brown* (1915), 169 App. Div. 695, 155 N. Y. Supp. 564, *affd.* 216 N. Y. 674.

Gift by city in aid of individual; repayment of counsel fees expended by employee in proceeding to retain position. By virtue of the Home Rule Act of 1913 (chapter 247, § 20, subd. 5), which empowers every city in the state to pay and compromise claims "equitably payable by the city, though not constituting obligations legally binding on it," the amount of counsel fees and disbursements incurred by the auditor of the city of Buffalo, a veteran of the Spanish-American war, in an unsuccessful mandamus proceeding instituted to compel his continuance in said office to which he had been appointed and to test the right to remove him therefrom, may properly be repaid by the city, and such payment does not violate the constitutional provision (Art. VIII, § 10) that no city shall give any money or property in aid of any individual nor incur any indebtedness except for city purposes. *Matter of Christey* (1915), 92 Misc. 1, 155 N. Y. Supp. 39.

Gift by city to railroad. *McCutcheon v. Terminal Station Commission* (1915), 168 App. Div. 301, 154 N. Y. Supp. 711.

Art. X, § 2. Appointment or election of officers, not provided for by constitution.

Home rule provision; rights of incorporated village; validity of provisions taking away right to access and levy taxes. This section embodies the home rule principle under which the right of self-government is secured to the localities of the state. It includes those rights of self-government which relate to the assessment and collection of taxes for village purposes which the villages enjoyed prior to the adoption of the present Constitution. Taxation for such a local purpose is the concern of the village rather than the town, county and state of which the village is an authorized subdivision, and within this limited local sphere the right to control the assessment and taxation of property for village purposes is a right which the village enjoys by virtue of the home rule provision of the Constitution. While the legislature has power to provide for the organization of cities and incorporated villages and to restrict their power of taxation, assessment, borrowing

Art. X, § 5; Art. XIV, § 1. Oath of office; amendments.

money and contracting of debts, so as to prevent abuses in assessments and in contracting debt, it cannot take away those local rights of self-government which the municipal corporation enjoyed when the present Constitution was adopted. *People ex rel. Town of Pelham v. Village of Pelham* (1915), 215 N. Y. 374, revg. 166 App. Div. 779, 152 N. Y. Supp. 1137.

Provisions of *Westchester County Tax Act* (L. 1914, ch. 510), which take away from incorporated villages their rights to assess and levy taxes, are unconstitutional and void. *People ex rel. Town of Pelham v. Village of Pelham* (1915), 215 N. Y. 374.

Art. X, § 5. Vacancies in office.

Vacancies in the office of school director may be filled by the Town Board, in accordance with section 130 of the Town Law. *Atty. Gen'l. Opin. 6 State Dep. Rep. 425* (1915).

Art. XIII, § 1. Oath of office.

Defective oath by superintendent of highways, failure to state that he has not directly or indirectly paid moneys or property to electors as a consideration for giving or withholding votes at the election. *People ex rel. Preston v. Keator* (1915), 169 App. Div. 368, 154 N. Y. Supp. 1007.

Art. XIV, § 1. Amendments to constitution.

The provision of this section as to the publication and submission of proposed amendments, is not self executing, and imposes upon the Legislature the duty of directing how and when they shall be submitted. A bill passed by the Legislature directing that amendments be referred to *another* Legislature, is unconstitutional and the Secretary of State has no authority thereunder to publish or submit to the people such amendments. *Atty. Genl. Opin. (1915), 4 State Dep. Rep. 535.*

1916
SUPPLEMENT
TO THE
CONSOLIDATED LAWS OF NEW YORK

ACTIONS.

See Creditors' Actions; Surrogates' Courts; Appeals.

Code of Civil Procedure.

§ 390. Action against a nonresident, upon a demand barred by the law of his residence.—Where a cause of action, which does not involve the title to or possession of real property within the state, accrues against a person, who is not then a resident of the state, an action cannot be brought thereon in a court of the state, against him or his personal representative, after the expiration of the time, limited, by the laws of his residence, for bringing a like action, provided that if the limitation of the time fixed by the laws of his residence for bringing such action be less than the time fixed by the laws of this state for a like action, the limitation fixed by the laws of this state shall apply. This section shall not apply to a case in which a person is entitled, when this section as amended takes effect, to commence such action, where he commences the same before the expiration of six months after this section as amended takes effect; in which case the provisions of law applicable thereto immediately before this section as amended takes effect shall continue to be so applicable, notwithstanding the repeal thereof. (*Amended by L. 1916, ch. 536, in effect May 15, 1916.*)

ADMINISTRATORS.

Execution against decedent's property. See Executions. Generally, see Surrogates' Courts.

ADOPTION.

Requisites of voluntary, Domestic Relations L., § 112.

AGRICULTURAL LAW.

(L. 1909, ch. 9.)

§ 2. Commissioner of agriculture.—There shall be a department of the state government known as the department of agriculture, which shall

§§ 5, 35a.

Annual report; milk tests.

L. 1916, ch. 118.

be charged with the execution of the laws relating to agriculture and agricultural products. The commissioner of agriculture shall be the chief of the department. The commissioner of agriculture shall be appointed by the governor, by and with the advice and consent of the senate. His term of office shall be three years. He shall be paid an annual salary of not to exceed eight thousand dollars and his necessary expenses incurred in the discharge of his official duties. He may appoint two deputy commissioners of agriculture, a director of farmers' institutes and appoint or employ such clerks, chemists, agents, counsel and other employees as he may deem necessary for the proper enforcement of such laws and the proper administration of the department, who shall receive such compensation as may be fixed by him, in cases where it is not otherwise fixed, and their necessary expenses. The compensation of his deputies, clerks, and other persons appointed or employed by him and such necessary expenses shall be paid on his certificate by the treasurer on the warrant of the comptroller. All other charges, accounts and expenses of the department authorized by law shall be paid by the treasurer on the warrant of the comptroller, after they have been audited and allowed by the comptroller. The trustees of public buildings shall furnish suitable rooms for the use of the department. (*Amended by L. 1909, ch. 580, L. 1913, ch. 345, L. 1914, ch. 96, and L. 1916, ch. 386, in effect May 2, 1916.*)

§ 5. **Annual report.**—The commissioner of agriculture shall make an annual report to the legislature on or before January fifteenth, of his work and proceedings for the year ending June thirtieth, next preceding, which shall include a statement in detail of the number of assistant commissioners, chemists, experts, agents, and counsel employed under the provisions of this chapter during such year, and their compensation, expenses and disbursements; and also a statement in detail of the expenditures of moneys appropriated for the state agricultural society, the county agricultural societies and the New York agricultural experiment station; and other agricultural purposes and estimates of the amounts required for all such purposes for the ensuing year. He may require the state agricultural society and the county agricultural societies to make reports to him and prescribe the form of such reports. (*Amended by L. 1916, ch. 118, § 27, in effect Apr. 3, 1916.*)

§ 35-a. **Fat tests of composite samples of milk.**—Corporations, associations or persons hereafter buying milk from producers of milk to be paid for on the basis of the percentage of milk fat contained therein and for that purpose taking samples therefrom to form a composite sample to be tested periodically to determine its value on such basis, shall, at the request of the producer, take such samples in duplicate and subject them to the same treatment. At the end of the period for which the composite sample is being taken such corporation, association or person shall tender same to the producer thereof or to his authorized agent and give such pro-

L. 1916, ch. 216. Registry of branded cans; condensed milk.

§§ 36a, 37.

ducer, or his said authorized agent, the choice of one of the two composite samples so taken. Such producer is hereby permitted to send such duplicate composite sample so received to the head of the department of dairy industry of the college of agriculture at Cornell University within ten days from the receipt thereof, properly marked for identification, and shall accompany same with his name and post-office address. Such department head shall cause such sample to be tested for the per centum of milk fat and shall send a report of such test to the producer from whom it was received within ten days, or as soon thereafter as possible. All tests made shall be by some person licensed by the commissioner of agriculture to make such tests, which said license shall be revocable by said commissioner of agriculture upon evidence of incompetency or inaccuracy. (*Added by L. 1916, ch. 219, in effect Apr. 15, 1916.*)

§ 36-a. Registry of branded cans.—Any person owning milk cans, jars or bottles upon which he has placed or desires to place any designating mark may register the said designating mark with the commissioner of agriculture, who shall keep a record thereof, and he may also register with the commissioner of agriculture, from time to time, the number of such cans, jars or bottles which he has or is to have, which do or may bear such designating mark. Such cans, jars or bottles shall, after being registered, be numbered consecutively and such consecutive numbers shall be registered in the department of agriculture, as above provided, with the designating mark. If any such can, jar or bottle, bearing such designating mark and one of the numbers in the serial shall be found in the possession of, and being used by any person other than the one so registering the same it shall be presumptive evidence of a violation of the provisions of the agricultural law, unless such person has the consent of the owner thereof to so have and use the same.

No person, except the original owner thereof, or a person duly authorized by him so to do, shall remove, deface or erase any of the marks upon the cans, jars or bottles herein provided for.

When the commissioner of agriculture, or any person duly authorized by him, shall find any such cans, jars or bottles, bearing the designating mark and number provided for, in the possession of or being used by another person than the owner thereof, he may seize the same, and if evidence is not produced in three days showing that such person had been given permission to have or use such cans, jars or bottles, then they shall be delivered by the commissioner of agriculture, or his agents, to the person from whom taken, otherwise the commissioner of agriculture shall notify the owner of such cans, jars or bottles that he has the same and upon application deliver the same to such owner. (*Added by L. 1916, ch 216, in effect Apr. 15, 1916.*)

§ 37. Regulations in regard to evaporated or condensed milk.—No evaporated or condensed milk shall be made or offered or exposed for sale

or exchange unless manufactured from pure, clean, healthy, fresh, unadulterated and wholesome milk from which the cream has not been removed either wholly or in part, or unless the proportion of milk solids shall be in quantity the equivalent of eleven and one-half per centum of milk solids in crude milk, and of which solids twenty-five per centum shall be fats. No person shall manufacture, sell or offer for sale or exchange in hermetically sealed cans, any condensed milk unless put up in packages upon which shall be distinctly labeled or stamped the name of the person or corporation by whom made and the brand by which or under which it is made. When evaporated or condensed milk shall be sold from cans or packages not hermetically sealed, the producer shall brand or label the original cans or packages with the name of the manufacturer of the milk contained therein, provided, however, that unsweetened evaporated or condensed milk, sold or offered for sale in containers not hermetically sealed, shall contain at least ten per centum of milk fats. (*Amended by L. 1911, ch. 608, and L. 1916, ch. 144, in effect Apr. 6, 1916.*)

§ 52. Penalties.—Every person violating any of the provisions of this chapter, shall forfeit to the people of the state of New York the sum of not less than fifty dollars nor more than one hundred dollars for the first violation and not less than one hundred dollars nor more than two hundred dollars for the second and each subsequent violation. When such violation consists of the manufacture or production of any prohibited article, each day during which or any part of which such manufacture or production is carried on or continued, shall be deemed a separate violation. When the violation consists of the sale, or the offering or exposing for sale or exchange of any prohibited article or substance, the sale of each one of several packages shall constitute a separate violation, and each day on which any such article or substance is offered or exposed for sale or exchange shall constitute a separate violation. If the sale be of milk and it be in cans, bottles or containers of any kind and if the milk in any one of such containers be adulterated, it shall be deemed a violation whether such vendor be selling all the milk in all of his containers to one person or not. When the use of any such article or substance is prohibited, each day during which or any part of which said article or substance is so used or furnished for use, shall constitute a separate violation, and the furnishing of the same for use to each person to whom the same may be furnished shall constitute a separate violation. Whoever by himself or another violates any of the provisions of articles three, four, six, eight and nine or sections three hundred fourteen and three hundred fifteen of this chapter or of sections one hundred six, one hundred seven and one hundred eight of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars, nor more than two hundred dollars, or by imprisonment of not less than one month nor more than six months or by both such fine and imprisonment, for the first offense;

and by six months' imprisonment for the second offense. (*Amended by L. 1916, ch. 384, in effect May 2, 1916.*)

§ 70. Definition of vinegars and adulterated vinegars.—All vinegars made by fermentation without distillation must carry in solution the extractive matter derived exclusively from the substances from which they were fermented. The terms "cider vinegar," "apple vinegar" shall be construed to mean the product made exclusively from the pressed juice of apples by alcoholic and subsequent acetous fermentations, the acidity, solids and ash of which have been derived exclusively from the apples from which it was fermented.

The term "sugar vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of solutions of sugar, syrup, molasses or refiner's syrup.

The term "malt vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of an infusion of barley malt.

The terms "wine vinegar," "grape vinegar," shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of the juice of grapes.

The terms "glucose vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of solutions of corn-sugar or glucose.

The terms "spirit vinegar," "distilled vinegar," "grain vinegar" shall be construed to mean the product made by the acetous fermentations of dilute distilled alcohol.

All vinegars which contain any added drugs, acids, coloring matter or ingredients not derived exclusively from the substances from which they were respectively made, or which shall contain less than four grams of acetic acid in one hundred cubic centimeters of the vinegar at twenty degrees centigrade, shall be deemed adulterated. Nothing herein shall be deemed to prohibit the manufacture of vinegar for consumption elsewhere than within this state, of such acid content as may be elsewhere required.

The product made by the destructive distillation of wood, known as pyroligneous acid, or acetic acid derived from other sources than fruit, grain, vegetables, sugar or syrups shall not be sold, offered, exposed or had in possession for sale, for food.

Mixtures of two or more of the vinegars herein defined are compounds, and the packages containing the same shall be plainly marked or branded with the word "compound" together with the proportions of the vinegars so mixed in addition to the other requirements of section seventy-two of this article.

Packages containing vinegars made from wine or fruits which have been reduced with water must be plainly marked or branded "reduced to ——— per centum acid strength" indicating the acidity to which they

§§ 71, 72, 104.

Vinegars; branding packages.

L. 1916, ch. 125.

have been so reduced, or words equivalent thereto. (*Amended by L. 1909, ch. 210, L. 1912, ch. 26, and L. 1916, ch. 125, in effect Apr. 3, 1916.*)

Action for penalty for sale of adulterated vinegar; when defense that vinegar sold was imported and not subject to statute, is not tenable. In an action to recover a penalty for the sale of adulterated vinegar in violation of this section, defended upon the ground that the vinegar was imported and that, under the commerce clause of the Constitution of the United States (Art. 1, § 8, subd. 3), the prohibition cannot be applied thereto, it appeared that the sale by the defendant was not in the original package in which it was imported nor was such sale the original sale by the importer. It was held, that defendant did not establish a sale in the original package of a legitimate article of commerce, and he has thus failed to bring himself under the protection of the Federal Constitution. *People v. Schmidt* (1916), 218 N. Y. 256, affg. — App. Div. —.

§ 71. Manufacture and sale of adulterated or imitation vinegar prohibited.—No person, firm or corporation shall manufacture, sell, offer, expose or have in possession for sale in this state:

1. Any vinegar defined herein not in compliance herewith.
2. Any adulterated vinegar.
3. Any vinegar or product in imitation of cider or apple vinegar which is not cider or apple vinegar.
4. As or for cider or apple vinegar any vinegar or product which is not cider or apple vinegar. (*Amended by L. 1916, ch. 125, in effect Apr. 3, 1916.*)

§ 72. Packages containing vinegar to be branded.—Every manufacturer or producer of vinegar shall plainly brand each cask, barrel or other container of such vinegar with his name and place of business, the kind of vinegar contained therein and the substance or substances from which it was made. And no person shall mark or brand as or for cider or apple vinegar any package containing that which is not cider or apple vinegar. Every person who sells any vinegar other than pure cider or apple vinegar, except it be delivered to the purchaser in the unbroken package in which such seller received it, shall plainly and conspicuously mark or brand the receptacle or container in which such vinegar is delivered to the purchaser, whether such receptacle or container be furnished by the seller or purchaser, with a label showing the kind of vinegar so delivered and the substance or substances from which it was made. Nothing herein shall be deemed to prohibit the sale of cider vinegar stock, provided it be sold as and for such and in compliance with the provisions of this article as to marking or branding. The term "cider vinegar stock" when used herein, shall be construed to mean acetified apple juice of less acidity than that required for vinegar which contains sufficient alcohol to develop the acidity required in vinegar. (*Amended by L. 1909, ch. 210, L. 1911, ch. 228, and L. 1916, ch. 125, in effect Apr. 3, 1916.*)

§ 104. Compensation for slaughter of animals on account of foot and mouth disease or anthrax.—In the event of the breaking out within the state of foot and mouth disease or anthrax, the control, suppression

or eradication of which involves the general condemnation and slaughter of cattle, sheep or swine and the disposal of the carcasses thereof by state authorities in the interest of public health and welfare, the owner of each such animal slaughtered shall receive compensation for each animal slaughtered. The amount to be paid for each animal, pursuant to the provisions of this section, shall be fixed by a board of appraisal, to consist of the commissioner of agriculture, or his duly accredited representative, and a representative of the owner, appointed by the owner. If in any case the members of such board fail to agree, they shall choose a third member of such board, and the findings of a majority shall be final. Valuations in all cases shall be made on the basis of the utility value of the slaughtered animals as producing and breeding animals. The determination of such board as to the amount to be paid by the state to any owner for any such animal shall be final, and a certificate of appraisal shall be issued under the hands of a majority of such board to the owner. Such certificate shall be verified by the members of the board of appraisal signing the same. The amounts found to be due by an appraisal under this section less the amount paid or to be paid by the national government shall be paid, upon the audit and warrant of the comptroller, to the owners entitled thereto, upon presentation of proper certificates of appraisal. Awards not paid within thirty days from the making thereof shall bear interest at the rate of six per centum per annum, unless moneys appropriated therefor were available within said thirty days. The other provisions of this article relating to appraisal and amount of compensation shall not apply to the destruction of animals under this section where the conditions exist as herein provided. (*Added by L. 1915, ch. 586, and amended by L. 1916, ch. 140, in effect Apr. 6, 1916.*)

ARTICLE 5-A.

(Article added by L. 1916, ch. 322, in effect Aug. 1, 1916.)

THE LICENSING OF STALLIONS AND BREEDING OF HORSES.

Section 120. Enrollment of stallions required.

121. Duties of commissioner of agriculture.
122. Certificate of enrollment; inspection; disqualifying diseases.
123. Uses of stud book.
124. Enrollment; how made.
125. Issue of certificate of enrollment.
126. Posting certificate of enrollment.
127. Fees for enrollment.
128. Regulations.
129. Service of unenrolled stallion.
130. Penalties.

§ 120. Enrollment of stallions required.—No person, firm or corporation shall use or offer for use for public service in this state any stallion, unless and until he shall have caused the name, description, breeding and pedigree of such stallion to be enrolled and such stallion has been inspected in

accordance with the provisions of this article and a certificate, showing such enrollment and inspection, has been issued as hereinafter provided. (*Added by L. 1916, ch. 322, in effect Aug. 1, 1916.*)

§ 121. **Duties of commissioner of agriculture.**—It shall be the duty of the commissioner of agriculture to cause to be verified and enrolled the breeding and pedigree of stallions, to inspect certificates of conditions of soundness, to issue stallion certificates of enrollment, and to perform such other duties as may be necessary to carry out the provisions of this article. (*Added by L. 1916, ch. 322, in effect Aug. 1, 1916.*)

§ 122. **Certificate of enrollment; inspection; disqualifying diseases.**—In order to obtain a certificate of enrollment herein provided for, the owner of each stallion shall obtain a certificate of the condition of soundness of said stallion signed by a veterinarian, approved by the commissioner of agriculture, who shall make oath to said certificate before a notary public or any officer duly authorized to administer oaths, and shall forward this certificate of the condition of soundness, together with the original stud book certificate of registry of pedigree of the stallion in cases of pure bred stallions, and a certified statement of the breeding in all other cases, and in all cases all other necessary papers relating to his breeding and ownership, to the commissioner of agriculture, upon inspection and verification of which a certificate of enrollment shall be issued by the commissioner of agriculture. Any incurable, infectious or contagious disease with which the stallion may be afflicted shall disqualify said stallion for public service. Any transmissible unsoundness with which the stallion may be afflicted shall be named as such in said certificate of enrollment. The following diseases and unsoundness shall be defined as transmissible, for the purpose of this article: recurrent ophthalmia (moon blindness); cataract; amaurosis (glass eye); laryngeal hemiplegia (roaring or whistling); pulmonary emphysema (heaves, broken wind); string halt; bone spavin, side bone, nevicular diseases; curb, when associated with curby conformation of the hocks. Certificate of the condition of soundness shall be made upon the application for the first certificate of enrollment, and all enrollment certificates shall expire on the first day of January each year following date of issuance, and must be renewed annually before the first day of April following until the stallion is fifteen years old, and after the date of the issuance of the first certificate of enrollment, certificate of the condition of soundness shall not be required again if the stallion is fifteen years old or over; provided that in case where the stallion is fifteen years old or more, and at that time is sound and free from any and all incurable, infectious and transmissible diseases, as defined by this article, and so shown on the certificate of enrollment issued, no subsequent certificate of soundness shall be required. (*Added by L. 1916, ch. 322, in effect Aug. 1, 1916.*)

§ 123. **Use of stud book.**—The commissioner of agriculture shall use

L. 1916, ch. 322.

Breeding horses.

§§ 124-126.

for his standard for action in determining the purity or impurity of the breeding of stallions the stud book and signatures of the proper officers of the recognized American and Canadian horse register associations, societies or companies. (*Added by L. 1916, ch. 322, in effect Aug. 1, 1916.*)

§ 124. Enrollment; how made.—1. Every stallion shall be enrolled in the name of the owner at the time of the enrollment, and in case of the change of ownership, the enrollment shall be deemed to be canceled, unless within thirty days thereafter evidence of a change of ownership satisfactory to the commissioner of agriculture has been furnished to the commissioner of agriculture, in which case a transfer certificate shall be issued by the commissioner of agriculture.

2. When a certificate of enrollment has been issued after the first day of August in any year, the enrollment and certificate of enrollment and inspection of the stallion shall remain in force until the thirty-first day of December in the next succeeding year, and when the enrollment has been made before the first day of August in any year the enrollment and certificate thereof shall remain in force until the thirty-first day of December next following.

3. In the case of any other stallion the report of inspection shall be valid for one year only, except as provided in subdivision two. (*Added by L. 1916, ch. 322, in effect Aug. 1, 1916.*)

§ 125. Issue of certificate of enrollment.—The commissioner of agriculture, upon consideration and inspection of the papers supplied relating to the inspection, breeding and ownership of the stallion, and upon payment of the fee fixed by this article shall make such enrollment of the name, description and pedigree of the stallion in the register herein provided for as may be deemed warranted, and shall issue a certificate in accordance with such enrollment to the owner of the stallion. (*Added by L. 1916, ch. 322, in effect Aug. 1, 1916.*)

§ 126. Posting certificate of enrollment.—The owner of any stallion used for public service in the state shall post and keep affixed correct copies of the certificate of enrollment of such stallion issued under the provisions of this article, in conspicuous places both within and upon the outside of his home stable, and the stable or building where the stallion is used for public service and at any farm or place away from his home. Every bill or poster issued by the owner of any stallion enrolled under this article, or used by him or his agent for advertising such stallion, shall contain a correct copy of the enrollment certificate printed in bold faced Roman type not smaller than long primer (ten point), and the first mention on said bill or poster of the name of the stallion shall be preceded by the words, "pure breed," "grade," "standard-breed," "non-standard breed," or "scrub," and the condition of soundness of said stallion indicated by the word "sound," or "unsound" in accordance with the word-

§§ 127-130, 160.

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L. 1916, ch. 322.

ing of the enrollment certificate, the same shall be printed in type not smaller than the largest type in which the name of said stallion shall be printed on said bill or poster. (*Added by L. 1916, ch. 322, in effect Aug. 1, 1916.*)

§ 127. **Fees for enrollment.**—There shall be paid to the commissioner of agriculture before the issuance of any certificate herein provided for, the following fees: For enrollment, three dollars; for renewal of enrollment, one dollar and for transfer certificate, fifty cents. Such fees shall be paid in to the state treasurer pursuant to the state financial law. (*Added by L. 1916, ch. 322, in effect Aug. 1, 1916.*)

§ 128. **Regulations.**—The commissioner may make such regulations as may be deemed proper and necessary for the better carrying out of the provisions of this article. (*Added by L. 1916, ch. 322, in effect Aug. 1, 1916.*)

§ 129. **Service of unenrolled stallion.**—On and after the first day of January, nineteen hundred and seventeen, no stallion shall be allowed to stand, or be offered for service, in the state of New York, which is not enrolled and certified by the commissioner of agriculture, and from and after such date no fees shall be collectible for the services of such stallion. (*Added by L. 1916, ch. 322, in effect Aug. 1, 1916.*)

§ 130. **Penalties.**—Every person who violates any of the provisions of this article shall be liable to a penalty of not more than one hundred dollars, nor less than twenty-five dollars, recoverable by the commissioner of agriculture. (*Added by L. 1916, ch. 322, in effect Aug. 1, 1916.*)

§ 160. **Term "concentrated commercial feeding stuffs" defined.**—The term "concentrated commercial feeding stuffs" as used in this article, shall include linseed meals, cottonseed meals, pea meals, bean meals, peanut meals, cocoanut meals, gluten meals, gluten feeds, maize feeds, starch feeds, sugar feeds, dried distiller's grains, dried brewer's grains, malt sprouts, except as hereinafter provided, hominy feeds, cerealine feeds, rice meals, dried beet refuse, oat feeds, corn and oat chops, corn and cob meal, ground beef or fish scraps, meat meals, meat and bone meals mixed, dried blood, mixed feeds, clover meals, alfalfa feeds and meals, compounded feeds, condimental stock and poultry foods, proprietary or trade-marked stock and poultry foods, and all other materials of a similar nature; but shall not include hays and straws, the whole seeds nor the unmixed meals, made directly from the entire grains of wheat, rye, barley, oats, corn, buckwheat and broom corn. Neither shall it include wheat, rye and buckwheat brans or middlings, not mixed with other substances, but sold separately, as distinct articles of commerce, nor pure grains ground together, nor corn meal and wheat bran mixed together, when sold as such by the manufacturer at retail, nor malt sprouts, when

sold as such by the maltster at retail, nor wheat bran and middlings mixed together not mixed with any other substances and known in the trade as "mixed feed," nor ground or cracked bone not mixed with any other substance, nor shall it include poultry foods consisting of whole or whole and cracked grains mixed together, with or without grit, when all the ingredients may be identified by the naked eye. (*Amended by L. 1909, ch. 317, L. 1910, ch. 436, L. 1912, ch. 277, and L. 1916, ch. 135, in effect Jan. 1, 1917.*)

§ 161. **Statements to be attached to packages; contents; analysis.**—No manufacturer, firm, association, corporation or person shall sell, offer or expose for sale or for distribution in this state, any concentrated commercial feeding stuffs used for feeding live stock unless such concentrated commercial feeding stuffs shall be accompanied by or shall have affixed to each and every package in a conspicuous place on the outside thereof, a plainly printed statement which shall certify as follows:

1. The net weight of the contents of the package, except in the case of malt sprouts sold in packages containing uneven weights.
2. The name, brand or trade-mark.
3. The name and principal address of the manufacturer or person responsible for the placing of the commodity upon the market.
4. Its composition expressed in the following terms:
 - a. The minimum per centum of crude protein.
 - b. The minimum per centum of crude fat.
 - c. The maximum per centum of crude fibre, provided that the per centum of crude fibre may be omitted if it does not exceed five per centum.
 - d. If a compounded feed, the name of each ingredient contained therein.
 - e. If artificially colored, the name of the material used for such purpose.
 - f. In the case of meat products, the maximum per centum of phosphoric acid.

If any such concentrated commercial feeding stuffs be sold, offered or exposed for sale in bulk, such printed statement shall accompany every car or lot. Any such feeding stuffs purchased in bulk and later sacked or bagged for purposes of sale shall have tags attached giving the information as provided herein before being sold, offered or exposed for sale. Whenever any feeding stuffs are sold at retail in bulk or in packages belonging to the purchaser, the seller upon request of the purchaser shall furnish the said purchaser the information contained in the certified statement provided herein. That portion of the statement required by this section relating to the quality of feeding stuffs shall be known and recognized as the guaranteed analysis. (*Amended by L. 1909, ch. 317, L. 1911, ch. 314, and L. 1916, ch. 135, in effect Jan. 1, 1916.*)

§ 202. **Penalties.**—Every person violating any of the provisions of this article, shall forfeit to the people of the state of New York the sum of not less than ten dollars, nor more than one hundred dollars for the first vio-

lation and not less than one hundred dollars nor more than two hundred dollars for the second and each subsequent violation. When such violation consists of the manufacture or production of any prohibited article, each day during which or any part of which such manufacture or production is carried on or continued, shall be deemed a separate violation. When the violation consists of the sale, or the offering or exposing for sale or exchange of any prohibited article or substance, the sale of each one of several packages shall constitute a separate violation, and each day on which any such article or substance is offered or exposed for sale or exchange shall constitute a separate violation. When the use of any such article or substance is prohibited, each day during which or any part of which said article or substance is so used or furnished for use, shall constitute a separate violation, and the furnishing of the same for use to each person to whom the same may be furnished shall constitute a separate violation. Whoever by himself or another violates any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten dollars, nor more than two hundred dollars, or by imprisonment of not less than one month nor more than six months or by both such fine and imprisonment, for the first offense; and by six months' imprisonment for the second offense.

A penalty of less than fifty dollars shall not be accepted from any person accused of a violation of any provision of this article unless the person paying such penalty shall at the time thereof sign a written statement admitting the violation and acknowledging that the penalty so paid is paid because of such violation. (*Added by L. 1916, ch. 623, in effect May 20, 1916.*)

ARTICLE 11-A.

(Article added by L. 1916, ch. 586, in effect May 18, 1916.)

BUREAU OF FARM SETTLEMENT.

Section 266. Bureau of farm settlement.

267. Powers and duties of director.

§ 266. Bureau of farm settlement.—There shall be in the department of agriculture a bureau of farm settlement. The head of such bureau shall be a director, who shall be appointed by the commissioner of agriculture. Such director shall exercise his powers and duties subject to the supervision and control of the commissioner. The commissioner shall employ such clerical and other assistants as are needed to enable such director to properly exercise his powers and duties. The salary and compensation of such director and assistants shall be fixed by the commissioner within the amount appropriated therefor by the legislature. They shall also receive their actual necessary expenses incurred in the performance of their duties, within the amount appropriated. (*Added by L. 1916, ch. 586, in effect May 18, 1916.*)

L. 1916, ch. 228.

Commission merchants.

§§ 267, 282, 284.

§ 267. Powers and duties of director.—The director shall 1. Formulate plans for and promote the settling by desirable immigrant rural laborers, with their families, in farming sections;

2. Secure from the proprietors of farm lands proposals relating to the sale or leasing of such lands for the above purposes and the employment of such laborers on farms;

3. Obtain and disseminate information and data relating to such laborers and especially their availability for farming and farm labor;

4. Assist in the organization of local societies and associations for the promotion of farm settlements by such laborers and for the collection of information and data for the use of the director;

5. Communicate with prospective immigrant laborers in any part of the world and present the inducements and advantages offered for settlement and employment on farms in this state, and bring about intercommunication between them and proprietors of farm lands;

6. Expedite the making of agreements of sale, leasing or employment between proprietors of farm lands and such laborers;

7. Negotiate and arrange for the immigration and settlement of such farm laborers. (*Added by L. 1916, ch. 586, in effect May 18, 1916.*)

§ 282. Definitions as used in this article.—1. The term commission merchant shall include every person, firm, exchange, association and corporation licensed under this article to receive, sell or offer for sale on commission within this state any kind of farm produce; except where such farm produce is sold for consumption and not for resale. This article shall not apply to the sale of farm produce at public auction by a duly licensed and bonded auctioneer, acting as the agent of another to whom such farm produce shall have been consigned; nor shall this article apply to seeds sold at retail.

2. The term farm produce shall include all agricultural, horticultural, vegetable and fruit products of the soil, live stock and meats, poultry, eggs, dairy products, nuts and honey, but shall not include timber products, floricultural products, tea or coffee. (*Added by L. 1913, ch. 457, and amended by L. 1916, ch. 228.*)

§ 284. Bond and distribution of moneys recovered thereon.—Before any such license shall be issued every applicant shall execute and deliver to the commissioner of agriculture a fidelity bond with satisfactory sureties in the sum of three thousand dollars to secure the honest accounting to the consignor of the moneys received or due and owing by such commission merchant from the sale of the farm produce sold on commission, and the commissioner of agriculture may bring an action in any court of competent jurisdiction in the county in which is situated the place of business of the licensee, against the principal and sureties for the recovery of any such moneys.

If the recovery is had upon the bond and the amount so recovered is

sufficient to pay the claims of the consignor creditors in full, then each claim shall be fully paid. If it is not sufficient, then the moneys shall be paid pro rata on each such claim. After the commissioner shall have recovered and received the money on the bond, as herein provided, he shall notify all the consignor creditors of such commission merchant of whom he has knowledge that he has made such recovery and is about to distribute the same. He shall then advertise in at least two of the commercial or produce papers within the state at least once each week for a period of thirty days the fact of such recovery, notifying in such advertisement all consignor creditors to file a verified statement of their claims with the commissioner within thirty days of the expiration of the thirty day period of notice and that claims not filed during that time will not receive consideration. At the end of the sixty days thus provided for the commissioner shall, within thirty days thereafter unless prevented from so doing by a court order, distribute the money so recovered upon the bond, as herein provided, among the creditors whose claims have been duly filed and approved, and if a court order is made, then he shall make the distribution, as herein provided, within thirty days of the vacating of the court order. This act shall apply to all claims unliquidated at the time of the taking effect of this act. (*Added by L. 1913, ch. 457, and amended by L. 1916, ch. 385, in effect May 2, 1916.*)

§ 306. **The New York agricultural experiment station.**—The institution known as the New York agricultural experiment station, located in the city of Geneva, for the purpose of promoting agriculture in its various branches by scientific investigation and experiment, shall continue under the control and management of a board of trustees. Such board of trustees shall be known as the board of control of the New York agricultural experiment station and shall consist of nine members, except as hereinafter provided. The governor and commissioner of agriculture shall be members of the board by virtue of their offices. The governor shall appoint the other seven members of such board, whose term of office shall be three years, provided, however, that the present members of the board of control shall continue in office until the expiration of the terms to which they were appointed. Such board of control, of which five members shall constitute a quorum, shall hold an annual meeting and such other meetings from time to time as they may deem necessary and shall annually elect a president from their own number, and appoint a secretary and treasurer, to hold their offices during the pleasure of the board. Such board of control shall have general management of the station and shall appoint a director to have oversight and management of the experiments and investigations and other scientific and expert work which shall be deemed necessary to accomplish the objects of said institution, and such board may employ competent and suitable chemists and other experts and persons necessary for carrying on the work of the station, and shall fix the compensation of all persons connected with the work of said station. Said

station shall, besides conducting experiments and investigations for the promotion of agricultural science, perform and report to the commissioner of agriculture such analysis and other expert scientific work as said commissioner may request as necessary for the administration of the provisions of this chapter and the salaries and other expenses incurred by reason of such analyses and other expert scientific service shall be paid from funds provided for said station for the express purpose of aiding in enforcing the provisions of this chapter. Said board of control shall publish or cause to be published, from time to time, bulletins and reports giving the results of the experiments and investigations conducted by said station for the promotion of agriculture in its various branches, together with such other information as may promote the purposes and welfare of said institution. Such board shall have direction of the expenditure of all moneys appropriated to said station; the director shall annually on or before the fifteenth day of December make a full report to the board of the work accomplished by said station, which report, together with a statement of the receipts and expenditures for the year ending the thirtieth day of June then next preceding, and such other statements as may seem desirable, the board shall transmit to the commissioner of agriculture on or before the first day of January next succeeding, and said report shall constitute part of the annual report of the commissioner of agriculture. No member of said board shall receive any compensation for his services as such, but shall be paid his necessary traveling expenses and those expenses incurred by him by an actual attendance upon the meetings of such board. The board shall make such rules and regulations as may from time to time become necessary to carry out the objects of the station. (*Amended by L. 1916, ch. 118, § 28, in effect Apr. 3, 1916.*)

§ 311. Distribution of moneys appropriated for certain agricultural societies.—Of all moneys appropriated in the regular appropriation bill during any one year by the legislature for distribution among the agricultural societies by the commissioner of agriculture, the said commissioner may distribute to the agricultural societies entitled to partake thereof an amount to each one, on or after the first day of July, in the said year from the moneys due said society not to exceed fifty per centum of the amount of premiums paid by the said society at its annual fair held during said year. Any balance or balances shall be distributed as provided by section three hundred and ten of this chapter. (*Amended by L. 1916, ch. 118, § 29, in effect Apr. 3, 1916.*)

ANIMALS.

Condemnation as diseased, Agricultural L., § 104. Unloading and feeding in transportation, Penal L., § 193. Selling disabled horses, Penal L., § 188-a.

APPEALS.

Code of Civil Procedure.

§ 1345. **Judgment or order, where entered.**—A judgment or order of the appellate division rendered upon an appeal authorized by this title must be entered in the office of the clerk of the appellate division in the department in which the court below is located. A certified copy thereof annexed to the papers transmitted from the court below must be transmitted by the clerk, upon payment of his fees, to the clerk of the county where the court from which the appeal was taken is situated, and shall constitute the judgment-roll and remain in his office. The filing of the judgment-roll or the entry of the order, as prescribed in this section, is a sufficient authority for any proceeding in the court below or before the judge or justice who made the order appealed from which the judgment or order of the appellate court directs or permits. But where the execution of the judgment or order of the appellate court is stayed by an appeal to the court of appeals, the proceedings in the court below or before the judge or justice, who made the order, are stayed in like manner. A judgment or order of the supreme court, rendered upon an appeal from a judgment of any district court or of the city court of New York, or an appeal heretofore heard by the superior court of Buffalo, must be entered in the office of the clerk of the county wherein the court below is located, and with the papers transmitted from the court below, forms the judgment-roll which must be filed in the same office. Where the appeal is from the city court of New York, the judgment or order of the supreme court must be entered in the office of the clerk of said court. Where the appeal is from a county court, the judgment must be entered by and filed in the office of the clerk of the county wherein the court below is located. (*Amended by L. 1916, ch. 84, in effect Mch. 30, 1916.*)

Code of Criminal Procedure.

§ 456. **Minutes of proceedings.**—Where the defendant is convicted of a crime the clerk of the court in which the conviction was had shall within two days after a notice of appeal shall be served upon him notify the stenographer that an appeal has been taken whereupon the stenographer shall within ten days after receiving such notice deliver to the clerk of the court a copy of the stenographic minutes of the entire proceedings of the trial certified by the stenographer as an accurate transcript of such proceeding. Such copy shall be filed by the clerk in his office and shall constitute the minutes of the court of the trial and be included in the judgment-roll as provided by section four hundred and eighty-five of this act. The expense of such copy shall be a county charge, payable to the stenographer out

L. 1916, ch. 230. Criminal; settlement of case, etc. Code Crim. Pro. §§ 458, 485.

of the court fund upon the certificate of the judge presiding at the trial. (*Amended by L. 1916, ch. 230, in effect Apr. 17, 1916.*)

§ 458. **Case when necessary, how made and settled.**—When a party intends to appeal from a judgment rendered after the trial of an issue of fact he must, except as otherwise prescribed by law or by this section, make a case and procure the same to be settled and signed, by the judge or justice, by or before whom the action was tried, as prescribed in the general rules of practice; or, in case of the death or disability of such judge or justice, in such manner as the appellate court directs. The case must contain so much of the evidence, and other proceedings upon the trial, as is material to the questions to be raised thereby, and also the exceptions taken by the parties making the case; and in a case where a special question is submitted to the jury, such exceptions taken by any party to the action as shall be necessary to determine whether there should be a new trial, if the judgment be reversed. If it afterwards becomes necessary to separate the exceptions, the separation may be made and the exceptions may be stated with so much of the evidence, and other proceedings, as is material to the questions raised by them, in a case prepared and settled as directed by the general rules of practice, or in the absence of directions therein, by the court, upon motion. When the defendant intends to appeal from a judgment entered after a trial of an issue of fact where he is convicted of a crime it shall not be necessary to make a case or bill of exceptions as prescribed in this section, but the appeal shall be heard upon the judgment-roll including the copy of the minutes of the trial filed as prescribed by section four hundred and fifty-six of the code of criminal procedure. Within thirty days after the service of a notice of appeal from a judgment of conviction of a crime not punishable by death, the appellant shall procure to be printed as required by the general rules of practice the record upon which the appeal is to be heard and cause the same to be filed with the clerk of the appellate division of the supreme court in which the appeal is to be heard duly certified by the clerk of the court in which the conviction was had. If the printed copy of the record so certified is not filed within the time hereinbefore specified the district attorney may move to dismiss the appeal upon four days' notice to the adverse party and such appeal shall be dismissed unless the appellate division of the supreme court shall for good cause shown by order extend the time for filing the printed papers so certified as aforesaid. (*Amended by L. 1916, ch. 230, in effect Apr. 17, 1916.*)

§ 485. **The judgment-roll.**—When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction has been had; and must, upon the service upon him of notice of appeal, immediately annex together and file the following papers, which constitute the judgment-roll:

§ 1.	Unexpended balance.	L. 1916, ch. 126.
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1. A copy of the minutes of a challenge interposed by the defendant to a grand juror, and the proceedings and decision thereon;
2. The indictment and a copy of the minutes of the plea or demurrer;
3. A copy of the minutes of a challenge, which may have been interposed to the panel of the trial jury, or to a juror who participated in the verdict, and the proceedings and decision thereon;
4. A copy of the minutes of the trial;
5. A copy of the minutes of the judgment;
6. A copy of the minutes of any proceedings upon a motion either for a new trial or in arrest of judgment;
7. The case, if there be one;
8. When the judgment is of death, the clerk of the court in which the conviction was had shall, within thirty days after a notice of appeal shall be served upon him, cause to be prepared and printed, as required by the general rules of practice, the record and judgment-roll upon which the appeal is to be heard as prescribed in this section and in section four hundred and fifty-six of this act and, after being duly certified by him, cause the same to be filed with the clerk of the court of appeals and must cause to be forwarded to the said clerk the number of copies of the record and judgment-roll which are required by the rules of the court of appeals, which shall form the case and exceptions upon which the appeal shall be heard, and three copies shall also be furnished to the defendant's attorney and three to the district attorney and one to the governor of the state, and the remainder distributed according to the rules of the court of appeals. The expense of preparing and printing the judgment-roll in such case shall be a county charge, payable out of the court fund upon the certificate of the county clerk, approved by the county judge or a justice of the supreme court residing in the county in which the conviction was had. (*Amended by L. 1916, ch. 230, in effect Apr. 17, 1916.*)

APPORTIONMENT.

See State L., §§ 120-122.

APPROPRIATIONS.

L. 1916, ch. 126.—An act to provide for returning to the general fund the unexpended balance of certain existing appropriations and to repeal the acts and parts of acts making such appropriations, with respect to the unexpended balances. (*In effect Apr. 3, 1916.*)

Section 1. The unexpended balances of all existing appropriations made prior to January first, nineteen hundred and sixteen, from the general fund and the unexpended balances thereof in the canal maintenance fund, less the amount of liabilities chargeable to such appropriations or fund, and incurred or to be incurred not later than June thirtieth, nineteen hundred and sixteen, shall revert to the general fund and be available for the payment of moneys appropriated by the legislature during or after the

ARMORIES—AUTOMOBILES.

L. 1916, ch. 441.

Attachment; actions.

Code Civ. Pro. § 635.

year nineteen hundred and sixteen, except appropriations for construction work, permanent betterments and repairs; and all such appropriations, other than the appropriations for such construction work, betterments and repairs, shall cease to have force or effect, and the various acts therefor in so far as they make such appropriations are repealed, after June thirtieth, nineteen hundred and sixteen, except for the purpose of paying liabilities incurred on or before that date.

ARMORIES.

See Military Law.

ASSEMBLY.

Apportionment of members; State L., §§ 121, 122.

ATTACHMENT.

Code of Civil Procedure.

§ 635. In what actions.—A warrant of attachment against the property of one or more defendants in an action, may be granted upon the application of the plaintiff, as specified in the next section, where the action is to recover a sum of money only, as damages for one or more of the following causes:

1. Breach of contract, express or implied, other than a contract to marry.
2. Wrongful conversion of personal property.
3. An injury to person or property, in consequence of negligence, fraud or other wrongful act.
4. A wrongful act, neglect or default by which the decedent's death was caused, when the cause of action arose in this state before or after the passage of this act and the action is brought by an executor or administrator against a natural person who, or a corporation which, would have been liable to an action in favor of the decedent by reason thereof if death had not ensued as prescribed by section nineteen hundred and two of this act. (*Amended by L. 1916, ch. 441, in effect May 9, 1916.*)

AUTOMOBILES.

Mutual casualty insurance corporations, Insurance L., §§ 340-348. Fire Insurance (mutual) corporations, Insurance L., §§ 320-328. See also Highway L., §§ 282 ff.

BANKING LAW.

(L. 1914, ch. 369.)

§ 57. When superintendent may take possession of delinquent corporation, banker or personal loan broker.

The business of private banking is subject to general regulation and when the superintendent of banks seizes possession of the property of a private banker because he thinks the bank unsafe, it is only an incident of the right of public control that the banker loses possession which he might have protected against direct process in a criminal prosecution. *Matter of Mandel* (1915), 224 Fed. 642.

§ 131. Reports of directors' examinations; penalty for failure to make or file.

Liability of directors.—Directors specially charged by the statute to know the condition of their institution cannot be heard to say that they did not know the things which a fair and intelligent discharge of their duties must have disclosed. *Gregory v. Binghamton Trust Co.* (1915), 168 App. Div. 805, 154 N. Y. Supp. 376.

§ 133. Reports to superintendent; penalty for failure to make.—Within ten days after service upon it of the notice provided for by section forty-two of this chapter, every bank shall make a written report to the superintendent, which report shall be in the form and shall contain the matters prescribed by the superintendent and shall specifically state the items of capital, deposits, specie and cash items, public securities and private securities, real estate and real estate securities, and such other items as may be necessary to inform the public as to the financial condition and solvency of the bank, or which the superintendent may deem proper to include therein, and shall also state the amount of deposits the payment of which, in case of insolvency, is preferred by law or otherwise over other deposits. Every such report shall be verified by the oaths of the president or vice-president and cashier, or assistant cashier, and such verification shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it, and that the usual business of the bank has been transacted at the location required by this article and not elsewhere. Every such report exclusive of the verification, shall within thirty days after it shall have been filed with the superintendent, be published by the bank in one newspaper of the place where its principal place of business is located, or if no newspaper is published there, in the newspaper published nearest to such place.

Every such bank shall also make such other special reports to the superintendent as he may from time to time require, in such form and at such date as may be prescribed by him and such report shall, if required by him, be verified in such manner as he may prescribe.

Every such bank which does not have an unimpaired surplus fund equal

L. 1916, ch. 96.

Reports to superintendent.

§§ 140, 188, 218.

to at least twenty per centum of its capital shall, within ten days after declaring a dividend, make a written report to the superintendent stating the amount of such dividend, the amount of its net earnings in excess thereof and the amount carried to the surplus fund. Such report shall be verified by the oath of the president or vice-president and cashier, or assistant cashier of the bank.

If any such bank shall fail to make any report required by this section on or before the day designated for the making thereof, or shall fail to include therein any matter required by the superintendent, such bank shall forfeit to the people of the state the sum of one hundred dollars for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the superintendent as provided by section forty-nine of this chapter. The moneys forfeited by this section, when recovered, shall be paid into the state treasury to reimburse the state for the sums advanced by it for the expenses of the department. (*Amended by L. 1916, ch. 96, in effect Mch. 30, 1916.*)

§ 140. Prohibitions against encroachments upon certain powers of banks.

Application.—A corporation organized for the purpose of increasing the business of retail merchants, which proposes to issue checks, stamps or other evidences of debt, and to sell them to merchants who in turn can place them in a bank to be eventually paid out of a fund which has been set aside by the corporation, thereby violates the provisions of this section. *Atty. Genl. Opin., 5 State Dep. Rep. 530 (1915).*

§ 188. Provisions as to powers of trust companies.

Liability for interest on trust estate held as executor.—A trust company doing a banking business which has been named as an executor and appointed as such as permitted by the statute, which receives the trust estate on deposit, is not liable for the full legal interest of six per cent, but is liable only for the three per cent interest which it pays to other depositors. Where, on the accounting of such corporate executor, it is sought to surcharge its account with the amount of legal interest, the costs of a reference of the issue should be charged to the estate and not imposed upon the executor. *Matter of People's Trust Co. (1915), 169 App. Div. 699, 155 N. Y. Supp. 639.*

Preference of claims.—Sections 189 and 190 of the Banking Law of 1909 construed, and *held* that the claim for certain trust moneys is not preferred under the statute, nor is it preferred in equity. *Madison Trust Co. v. Carnegie Trust Co. (1915), 167 App. Div. 4, 152 N. Y. Supp. 517.*

Receipt by trust company of sum of money under agreement to purchase certain stocks, to hold same in trust for payor and to repay any balance, constitutes a trust. Such trust is not a preferred claim under section 190 of Banking Law of 1909. On default and insolvency of trust company, payor may recover a money judgment. *Madison Trust Co. v. Carnegie Trust Co. (1915), 215 N. Y. 475.*

§ 218. **Reports to superintendent; penalty for failure to make.**—Within ten days after service upon it of the notice provided for by section forty-two of this chapter, every trust company shall make a written report to the superintendent, which report shall be in the form and shall contain

the matters prescribed by the superintendent and shall specifically state the items of capital, deposits, specie and cash items, public securities and private securities, real estate and real estate securities, and such other items as may be necessary to inform the public as to the financial condition and solvency of the trust company, or which the superintendent may deem proper to include therein, and shall also state the amount of deposits the payment of which, in case of insolvency, is preferred by law or otherwise over other deposits. Every such report shall be verified by the oaths of the president or vice-president and another principal officer of the trust company and such verification shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it, and that the usual business of the trust company has been transacted at the location required by this article and not elsewhere. Every such report exclusive of the verification shall, within thirty days after it shall have been filed with the superintendent, be published by the trust company in one newspaper of the place where its principal place of business is located, if there be one; if not, then in the newspaper published nearest where such trust company is located.

Every such trust company shall also make such other special reports to the superintendent as he may from time to time require, in such form and at such date as may be prescribed by him, and such report shall, if required by him, be verified in such manner as he may prescribe.

Every such trust company, which does not have an unimpaired surplus fund equal to at least twenty per centum of its capital shall, within ten days after declaring a dividend, make a written report to the superintendent stating the amount of such dividend, the amount of its net earnings in excess thereof and the amount carried to the surplus fund. Such report shall be verified by the oath of the president or vice-president and another principal officer of the trust company.

If any such trust company shall fail to make any report required by this section on or before the day designated for the making thereof, or shall fail to include therein any matter required by the superintendent, such trust company shall forfeit to the people of the state the sum of one hundred dollars for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the superintendent as provided by section forty-nine of this chapter. The moneys forfeited by this section, when recovered, shall be paid into the state treasury to reimburse the state for the sums advanced by it for the expenses of the department. (*Amended by L. 1916, ch. 96, in effect Mch. 30, 1916.*)

§ 239. Investment of deposits and guaranty fund and restrictions thereon.
—*Subd. 8, amended by L. 1916, ch. 363, in effect May 1, 1916, as follows:*

8. (a) Promissory notes payable to the order of the savings bank upon demand, secured by the pledge and assignment, if necessary, of the stocks

L. 1916, ch. 164.

Savings banks; repayment of deposits.

§ 248.

or bonds or any of them enumerated in subdivisions one, two, three, four, five and ten of this section or by the railroad bonds or any of them mentioned and described in subdivision seven of this section, but no such loan shall exceed ninety per centum of the cash market value of such securities so pledged. Should any of the securities so held in pledge depreciate in value after the making of such loan, the savings bank shall require an immediate payment of such loan or of a part thereof or additional security therefor, so that the amount loaned thereon shall at no time exceed ninety per centum of the market value of the securities so pledged for such loan.

(b) Promissory notes made payable to the order of the savings bank upon demand by a savings and loan association of this state which has been incorporated for three years or more and has an accumulated capital of at least fifty thousand dollars.

Subd. 10, added by L. 1916, ch. 363, in effect May 1, 1916, as follows:

10. Bonds of the land bank of the state of New York.

Prefer investments for savings bank.—The bonds of any city which is able to meet the conditions prescribed by this section, constitute a valid and proper investment of the funds of a savings bank. Atty. Genl. Opin., 6 State Dep. Rep. 499 (1916).

Bonds of the city of Omaha are proper investments for the funds of savings banks. Atty. Genl. Opin., 6 State Dep. Rep. 499 (1916).

§ 248. Regulations and restrictions as to repayment of deposits; pass books.—*Subd. 1, amended by L. 1916, ch. 164, in effect Apr. 1, 1916, as follows:*

1. The sums deposited with any savings bank, together with any dividends credited thereto, shall be repaid to the depositors thereof respectively, or to their legal representatives, after demand, in such manner and at such times, and under such regulations, as the board of trustees shall prescribe, subject to the provisions of this and the next following section. Such regulations shall be posted in a conspicuous place in the room where the business of such savings bank shall be transacted, and shall be printed in the passbooks or other evidences of deposit furnished by it, and shall be evidence between such savings bank and the depositors holding the same, of the terms upon which the deposits therein acknowledged are made.

The savings bank may at any time by a resolution of its board of trustees require a notice of sixty days before repaying deposits, in which event no deposit shall be due or payable until sixty days after notice of intention to withdraw the same shall have been personally given by the depositor, and such deposits, if not withdrawn within fifteen days after the expiration of the sixty days' notice, shall not then be due or payable under such notice or by reason thereof.

Nothing herein contained, however, shall be construed as impairing contracts heretofore made between savings banks and their depositors as to notice of withdrawal, or as prohibiting any savings bank from making payments of deposits before the expiration of said sixty day notice.

But no savings bank shall hereafter agree with its depositors in advance to waive said sixty days' notice nor shall it in the case of deposits hereafter made require a longer notice than the sixty days aforesaid.

A by-law of a savings bank permitting the secretary to waive the production of the pass book when paying deposits applies to joint accounts, and such waiver is not contrary to the provisions of this section. *Brooks v. Erie County Savings Bank* (1915), 169 App. Div. 63, 154 N. Y. Supp. 692.

A joint deposit in a savings bank in the name of husband and wife may be paid to either of them.—A bank is not negligent in making payment from such a deposit to a husband, in the absence of circumstances tending to show that it had knowledge or notice sufficient to put it upon inquiry that he was not entitled to draw the deposit. *Brooks v. Erie County Savings Bank* (1915), 169 App. Div. 63, 154 N. Y. Supp. 692.

Inability of depositor to produce book; statute construed.—The provision of the Banking Law to the effect that no savings bank shall pay any deposit unless the pass book of the depositor shall be produced and the proper entry made therein at the time of the transactions, does not make the production of the pass book an arbitrary condition which must at all hazards be complied with, and a depositor is entitled to receive his money where circumstances render the production of the book impossible. The rule requiring the production of the book is to protect the bank against the payment of deposits to others than those entitled thereto, and the reasonableness of the excuse for not producing the book must be determined in the light of this purpose. Thus, where in an action by a depositor against a savings bank to recover a deposit, it appears that he had removed to a foreign country with his wife, and while he was confined in an asylum his wife obtained the pass book, together with the proceeds of a check which the depositor had drawn, and departed for parts unknown to him, and he was subsequently unable to ascertain her whereabouts after reasonable inquiry, and the bank had no rule relating to the payment of deposits without the production of the book, and at trial made no contention that the plaintiff's search for his wife was not adequate, a judgment founded upon the verdict of a jury for the amount of the deposit should be affirmed. *Meighan v. Emigrant Industrial Savings Bank* (1915), 168 App. Div. 542, 153 N. Y. Supp. 312.

§ 279. Advertisements of unauthorized savings banks and the use of the word "savings" prohibited; exception as to school savings.—*Subd. 2, amended by L. 1916, ch. 90, in effect Mch. 30, 1916, as follows:*

2. The principal or superintendent of any public school in the state of New York or any person designated for that purpose by the board of education or other school authority under which such school shall be, or the superintendent or other designated head of any philanthropic agency incorporated for philanthropic purposes, if such agency be so authorized by certificate of the superintendent of banks, may collect from time to time small amounts of savings from the pupils of said school, or from the children or persons under the direction or guidance of such philanthropic agency, and deposit the same on the day of collection in some savings bank in the state or, in villages and cities in which there is no regularly established savings bank, in any savings and loan association, trust company, state or national bank located in the state and having an interest department, and upon the subsequent establishment of a savings bank in

L. 1916, ch. 139.

Investment companies; personal loans.

§§ 293, 368, 388.

such village or city the deposit of such moneys or the continuance of deposits in any savings and loan association, trust company, state or national bank previously used as a depository of school savings shall not be deemed a violation of the provisions of this section. The money so collected shall be placed to the credit of the respective pupils, children or persons from whom the money shall be collected, or if the amount collected at any one time shall be deemed insufficient for the opening of individual accounts, it shall be deposited in the name * of said principal, superintendent or head of such philanthropic agency or designated person, in trust to be by him eventually transferred to the credit of the respective pupils, children or persons to whom the same belongs. In the meantime, said principal, superintendent or head of such philanthropic agency or designated person shall furnish to the bank a list giving the names, signatures, addresses, ages, places of birth, parents' names and such other data concerning the respective pupils, children or persons as the savings bank may require, and it shall be lawful to use the words "system of school savings bank" or "school savings banks" or "thrift funds" in circulars, reports and other printed or written matter used in connection with the purposes of this section.

§ 293. General powers; investment companies.—*Subd. 1, amended by L. 1916, ch. 247, in effect Apr. 17, 1916, as follows:*

1. To sell, offer for sale or negotiate bonds or notes secured by deed of trust or mortgages on real property situated in this state or outside of this state, or choses in action owned, issued, negotiated or guaranteed by it; to advance money upon the security of such bonds, notes or choses in action; to purchase or otherwise acquire such bonds, notes or choses in action and to pledge them to secure the payment of collateral trust bonds or notes; to sell or otherwise negotiate such collateral trust bonds or notes.

§ 368. Personal loan companies; interest.

Application to private bankers.—Section 314 of the Banking Law (Laws of 1909, chap. 10), relating to the charge or receipt of interest in excess of the legal rate, does not apply to private bankers. Hence, in an action by a private banker to recover the balance due on a promissory note, payable to himself, the defendant is not entitled to plead and prove that the note was usurious and void under section 314 of the Banking Law. *Clarke v. Taylor* (1915), 167 App. Div. 376, 152 N. Y. Supp. 664.

§ 388. Power to borrow; restrictions thereon.—Any savings and loan association may borrow money for a term not to exceed one year if:

1. It has been authorized so to do by the vote of a majority of its board of directors, taken by ayes and nays and recorded in its minutes.
2. The aggregate of the money borrowed by it and the prior or underlying mortgages, liens or encumbrances upon the real estate upon which it

* So in original.

§§ 398, 424.

Loan bank; general powers.

L. 1916, ch. 139.

holds mortgages or to which it has taken title does not exceed twenty per centum of its accumulated capital, or two thousand dollars if its accumulated capital does not exceed ten thousand dollars. This restriction shall not apply to money obtained from the land bank of the state of New York through the issue of bonds on its account and secured by the assignment of bonds and mortgages or other securities by such association. Any such association, however, may accept from its members advance payments of dues upon its instalment shares and advance payments of interest and premium upon its loans; but such payments shall not be accepted in advance for a longer period than one year, nor shall the interest paid upon such advance payments exceed the rate of six per centum per annum. (*Amended by L. 1916, ch. 139, in effect Apr. 6, 1916.*)

§ 398. Restrictions on the payment of matured shares and withdrawals.

Withdrawal of value of matured stock; when action premature.—Where the by-laws of a co-operative building bank provide that, although the holder of matured stock may withdraw the value thereof, no amount shall be paid out in any week upon withdrawals exceeding one-third of the cash receipts of the bank for such week, except by a vote of the board of directors, and that where withdrawals in excess of said amount are demanded the applications shall be paid in order as received, an action brought by a stockholder is premature where it is unquestioned that, at the time it was commenced, applications for withdrawals prior to his exceeded one-third of the cash receipts. Section 229 of the Banking Law of 1909, as amended, empowering the Superintendent of Banks to take possession of such institution where demands for withdrawals remain unpaid for two years, does not amount to a command to such institution to pay within two years, but relates solely to the supervisory powers of the State Superintendent. *Molyneux v. Co-Operative Building Bank* (1915), 169 App. Div. 731, 155 N. Y. Supp. 633.

§ 424. General powers.—In addition to the powers conferred by the general corporation law the land bank of the state of New York shall, subject to the restrictions and limitations contained in this article and its by-laws, have the following powers:

1. To issue, sell and redeem bonds and notes secured by bonds and first mortgages made to or held by member associations.
2. To receive money or property from its members and from other associations, corporations and persons with whom it has contracts, engagements or undertakings, in instalments or otherwise; to enter into any contract engagement or undertaking with such associations, corporations or persons for the withdrawal of such money or property, with any increase thereof, or for the payment to them or to any association, corporation or person of any sum of money, at any time, either fixed or uncertain; to lend money to savings and loan associations upon the security of their promissory notes with or without collateral.
3. To invest its capital and other funds in bonds secured by first mortgages of real estate situated within the territory in which its members are authorized to make loans; and in securities which are authorized as investments for savings banks by section two hundred and thirty-nine of this chapter.

L. 1916, ch. 139.

Loan bank; bonds.

§ 426.

4. To receive by assignment from its members and to deposit in trust with the comptroller of the state of New York to be held by him as security for its and their outstanding obligations any first mortgages of real estate and the bonds secured thereby that are legally receivable by savings and loan associations; to empower such savings and loan associations as agents of the land bank, to collect and immediately pay over to the land bank the dues, interest and other sums payable under the terms, conditions and covenants of the bonds and mortgages; to return to, or permit such savings and loan associations to retain any sums of money so collected in excess of the amount required to meet the obligations of such associations respectively.

5. To purchase in its own name, hold and convey real property for the following purposes and no others:

(a) A plot whereon there is or may be erected a building suitable for the convenient transaction of its business from portions of which not required for its own use a revenue may be derived.

(b) Such as shall be mortgaged to it in good faith, by way of security for loans made by it or moneys due to it.

(c) Such as shall be conveyed to it for debts previously contracted in the course of its business, and such as it shall purchase at sales under judgments, decrees or mortgages held by it.

6. To designate as depositaries of its funds any bank, trust company, or savings bank of this state, or any national banking association located in this state doing a banking business under the laws of the United States. (*Amended by L. 1916, ch. 139, in effect Apr. 6, 1916.*)

§ 426. **Issuing of bonds.**—Bonds shall be issued in series of not less than fifty thousand dollars. All bonds issued by the land bank may be called on any interest day at one hundred and two and one-half per centum and interest by giving notice of not less than sixty days in a newspaper published in the city of New York. Any member association which is not indebted for borrowed money and has made no investments upon the security of real estate or taken title to real estate upon which there are prior mortgages, liens or encumbrances may pledge seventy-five per centum of its mortgages with the bonds secured thereby, to the land bank, as collateral security for bonds issued on its behalf. Whenever such obligations do not exceed ten per centum of the accumulated capital of the association, fifty per centum of such mortgage securities may be pledged to the land bank; and when such obligations exceed ten per centum of such capital, twenty-five per centum of such mortgage securities may be so pledged. Whenever all the members of a member association shall execute and deliver to such association bonds secured by first mortgages of real estate and shall each give his collateral bond to such member association guaranteeing the payment of the bonds and mortgages of all the other members, one hundred per centum of the mortgage securities of such association and the bonds secured thereby may be pledged by such association to the land

L. 1913, ch. 415, § 1.

State commission for blind.

L. 1916, ch. 118.

bank. The amortization payments upon all mortgages accepted by the land bank as collateral security for bonds shall be sufficient to liquidate the debt in a period not exceeding forty years. In the event of any default for more than ninety days in the payment of the principal of, or for more than ninety days in the payment of any instalment of interest upon, any of said bonds, the superintendent of banks may, of his own motion, and shall, upon the request in writing of the holders of said bonds in default to the amount of fifty thousand dollars, forthwith take possession of and proceed to liquidate the land bank. Upon such liquidation he shall be entitled in the name of the land bank to enforce all of its rights and securities and to collect and realize upon all of its assets, including all mortgages assigned to the said land bank by the several member associations, and deposited with the comptroller of the state of New York, up to the amounts advanced by the land bank to the several member associations thereon. Upon any such liquidation all said bonds then issued and outstanding shall forthwith become due and payable equally and ratably out of all the assets of said land bank in advance of any other debts thereof not specifically preferred by law. (*Amended by L. 1916, ch. 139, in effect Apr. 6, 1916.*)

BARGE CANAL ACT.

See Canal Improvements.

BLIND.

L. 1913, ch. 415, State Commission (B. C. & G.'s Consol. Laws, vol. 7, p. 185).

§ 8. The commission may appoint such officers and agents as may be necessary and fix their compensation within the limits of the annual appropriation, in all cases, giving preference to blind persons of equal efficiency, but no person employed by the commission shall be a member thereof. It shall make its own by-laws, and shall annually, on or before the first day of January, make a report to the governor and the legislature of its proceedings up to and including the thirtieth day of June preceding, embodying therein a properly classified and tabulated statement of its receipts and expenditures. The commission shall make a classified and tabulated statement of its estimate for the year ensuing, to the governor on or before the first day of January in each year. The annual report shall also present a concise review of the work of the commission for the preceding year, with such suggestions and recommendations for improving the condition of the blind and preventing blindness as to it may seem expedient. (*Amended by L. 1916, ch. 118, § 31, in effect Apr. 3, 1916.*)

BRIDGES.

Over Mohawk at Schenectady; see Schenectady.

BRONX COUNTY.

Salaries of clerks to transfer tax appraisers; Tax L., § 229. Transfer tax assistant; Tax L., § 234.

Barge canal.L. 1903, ch. 147.

BROOME COUNTY.

Board of elections abolished; Election L., § 209-a. Special deputy liquor tax commissioner; Liquor Tax L., § 6.

BUDGET.

Preparation of annual; Legislative L., §§ 26-32.

BULLS.

Lien for service; Lien L., §§ 160-163.

BUSINESS CORPORATION LAW.

(L. 1909, ch. 12.)

§ 8. Submission of consolidation agreement to stockholders.

Determination of value of good will; interest on capital invested; valuation of taxicabs; allowance for depreciation and obsolescence.—Appraisers, appointed as provided in this section of the Business Corporations Law, for the purpose of determining the value of the stock of a stockholder in a taxicab company who objected to its consolidation with another domestic corporation, may determine the value of the good will of the taxicab company by dividing the total net earnings by twenty-one and one-half, the approximate number of months during which the company had been in business, and then multiplying the yearly profits so obtained by three, but they should deduct from the average net profits interest on the capital invested in the business. Interest may be allowed on the value of the assets as determined by the appraisers on the date when the stockholder objected to the consolidation, excluding the value of the good will. In determining the value of the taxicabs, the appraisers should have deducted twenty, instead of ten per cent per annum for depreciation and obsolescence. Matter of Search (1915), 170 App. Div. 686, 156 N. Y. Supp. 579.

CANAL IMPROVEMENTS.

Barge Canal.

L. 1903, ch. 147 (B. C. & G.'s Consol. Laws, Vol. I, p. —).

Constitutionality.—Laws of 1913, chap. 801 amending the Barge Canal Act (Laws of 1903, chap. 147) by which private bridges and their franchises were made subject to condemnation for the Barge Canal was not within the power of the legislature to enact, being in direct conflict with section 4 of article 7 of the Constitution pursuant to which the Barge Canal Act became a law. Halfmoon Bridge Co. v. Canal Board (1915), 91 Misc. 600, 155 N. Y. Supp. 602.

When injunction may be obtained against state officials compelling them to build new highway bridge over barge canal.—The Barge Canal Act (L. 1903, ch. 147, § 3) provides that "New bridges shall be built over the canals to take the place of existing bridges whenever required, or rendered necessary by the new location of the canals," and places that duty upon the defendant state officials. By virtue of this act where a highway bridge across the Hudson river between two towns has been rendered useless by the canalization of the river at that point, the towns affected thereby are entitled to an injunction enjoining and restraining the canal board, and other state officials having charge of the state canals, from failing and refusing to complete the building of a new bridge to take the place of the bridge rendered useless by the new canal. A contention that the judgment herein cannot be sus-

L. 1915, ch. 640, § 1.

Claims for canal lands.

L. 1916, ch. 420.

tained, because it attempts to fix a liability against the state without legislative permission and that the Supreme Court is without jurisdiction, is untenable. The action is not against the state, but against certain state officers, and the judgment merely directs these officials to perform their statutory duty. *Town of Easton v. Canal Board* (1916), 216 N. Y. 486.

Destruction of telephone line by appropriation of lands for barge canal.—When telephone company entitled to compensation because of destruction of telephone business and depreciated value of structures, see *New York Telephone Co. v. State* (1915), 169 App. Div. 310, 154 N. Y. Supp. 1059.

L. 1915, ch. 640, § 1 (B. C. & G.'s Consol. Laws, Supp. 1915, p. 63).

§ 1. **Claims for appropriations of land.**—The court of claims shall have jurisdiction of and may hear and determine any claim against the state, heretofore accrued, which shall be filed within one year after this act takes effect, for compensation or damages for or on account of the appropriation or use by the state of any lands, structures, waters, franchises, rights, easements or other property in connection with the improvement of the Erie, Champlain and Oswego canals, as provided by chapter one hundred and forty-seven of the laws of nineteen hundred and three, and acts amendatory thereof and supplemental thereto, the Cayuga and Seneca canals, as provided by chapter three hundred and ninety-one of the laws of nineteen hundred and nine, and acts amendatory thereof and supplemental thereto, and for the purpose of furnishing proper terminals and facilities for barge canal traffic, as provided for by chapter seven hundred and forty-six of the laws of nineteen hundred and eleven, and acts amendatory thereof and supplemental thereto, notwithstanding the lapse of time since the accrual of the claim; but nothing herein contained shall be deemed to shorten the time within which any such claim may be hereafter filed pursuant to any statute giving such court jurisdiction of a claim accruing within two years before the filing thereof. The filing of such claim shall also be in lieu and stead of any notice of intention to so file. This section, as amended, shall not create any new right or ground of claim against the state but is intended as an extension of time in which to file such notice of intention and such claim. (*Amended by L. 1916, ch. 420, in effect May 4, 1916.*)

CANAL LAW.

(L. 1909, ch. 13.)

§ 15. **Canal board; general powers.**—*Subd. 11, added by L. 1916, ch. 300, in effect Apr. 25, 1916, as follows:*

11. Whenever as a result of the appropriation of land for canal or terminal purposes, other lands are isolated or cut off from access to a public street, highway or navigable waterway, the canal board may sell and convey to the owner of such unappropriated land, his heirs, successors in interest or assigns such an interest, easement or estate in or right of way over any lands acquired by the state for canal or terminal purposes, as will restore and afford access from such unappropriated lands to such public

L. 1916, ch. 300.

Canal board.

§§ 88, 120.

street, highway or navigable waterway, provided that it shall first determine that such interest, easement or estate in or right of way over any lands is no longer necessary for canal purposes. And it may authorize and direct the superintendent of public works, in the name of the people of the state, on such terms and conditions as it deems just, or in diminution of damages, to execute, tender and deliver to the owner of such unappropriated lands, his heirs, successors in interest or assigns, a quit-claim deed conveying such interest, easement or estate in or right of way over canal or terminal lands.

§ 88. Awards how distributed in case of liens or encumbrances.

See generally, *New York Telephone Co. v. State* (1915), 169 App. Div. 310, 154 N. Y. Supp. 1059.

§ 120. Alteration of roads.

See generally, *New York Telephone Co. v. State* (1915), 169 App. Div. 310, 314, 154 N. Y. Supp. 1059.

CHILD WELFARE.

Appointment of boards in cities; General Municipal L., §§ 150, 152.

CHILDREN.

Employment in connection with making motion picture films; Penal L., § 485.

L. 1915, ch. 579, § 2.

Workhouses; parole.

L. 1916, ch. 287.

CITIES.

Optional Government.

L. 1914, ch. 444, § 15 (B. C. & G.'s Consol. Laws, Supp. 1914, p. 345).

§ 15. **Preparation and presentation of petition.**—After June thirtieth, nineteen hundred and seventeen, a petition may be presented at any time to the common council of the city, in the form, and signed and certified as provided in the next section. The petition shall be presented by filing the same with the city clerk. It shall be signed by qualified electors of the city to a number at least equal to ten per centum of the number of votes cast therein at the general election preceding the presentation of the petition in a city where less than twenty thousand votes were so cast, and in any other city by qualified electors of the city to the number of not less than two thousand. (*Amended by L. 1916, ch. 156, in effect Apr. 7, 1916.*)

L. 1916, ch. 156, § 2. The provisions of this act shall not in any wise affect the presentation of a petition prior to the time this act takes effect.

Development of Workhouses.

L. 1915, ch. 579 (B. C. & G.'s Consol. Laws, Supp. 1915, p. 72).

§ 2. **Appointment of parole commission.**—In the event of such action by the board of estimate and apportionment or other corresponding board or body as aforesaid, then within sixty days thereafter the mayor of such city shall appoint three members of the said commission who, together with the commissioner of correction, ex officio, and the police commissioner, ex officio, of said city shall constitute the parole commission in and for said city. Of the three appointive members first named hereunder, one shall hold office for two years, one for four years and one for six years, as shall be designated by the mayor. Upon the expiration of each of said terms the mayor shall appoint a successor for the full term of ten years. Vacancies occurring by expiration of a term shall be filled by the mayor for the full term; vacancies occurring from any other cause shall be filled by the mayor for the unexpired term only. Any of the appointive members of said commission shall be subject to removal by the mayor on account of official misconduct or neglect of official duty, or mental or physical inability to perform his official duties, but before such removal the member shall be entitled to due and timely notice in writing of the charges against him and to a copy thereof, and to a public hearing on like notice before the mayor. The board of estimate and apportionment or other corresponding board, boards or body having jurisdiction thereof, shall determine whether or not the appointive members of the commission shall receive any compensation for their services and the amount thereof. But neither the commissioner of correction nor the police commissioner, as ex

L. 1916, ch. 287.

Workhouses; parole.

§§ 3, 4.

officio members of such commission shall receive any compensation as such. Each of the appointive members of the commission shall before entering upon the duties of his office take the oath of office prescribed by the constitution of the state. The mayor of any of said cities shall designate one of such members to be the chairman of the parole commission of such city, and may, at the expiration of the term of the member appointed to hold office for two years, designate the member appointed for four years, or the member appointed for six years, or the member then appointed for a full ten year term, to be chairman of the parole commission of such city. (*Amended by L. 1916, ch. 287, in effect Apr. 24, 1916.*)

§ 3. **Presiding officer; quorum; committing magistrates' meetings.**—A majority of the members of the commission shall constitute a quorum for the transaction of business. It shall be the duty of said commission to meet at least once in each week, except during the months of July and August. If by reason of pressure of official business or otherwise, the commissioner of correction or the police commissioner shall deem his absence from a meeting of the parole commission necessary, he may designate a deputy commissioner to represent him, and such deputy commissioner shall possess all the powers and perform all the duties of said commissioners, respectively, as members of the parole commission. The parole commission in and for the city of New York shall maintain a central office in the borough of Manhattan and a central office in the borough of Brooklyn. Any committing magistrate or judge of any court who shall make commitments under indeterminate sentences to a workhouse or a reformatory under the jurisdiction of a department of correction, as provided in this act, shall be entitled to sit with the parole commission of said city during the consideration of the eligibility for parole of any person by him committed to any institution under an indeterminate sentence, with authority to vote on such matter. The parole commission shall give or cause to be given due notice to each of such committing magistrates or judges, stating the time and place of the meeting of the commission and the names, offenses, dates of commitment and the recommendations of the parole officers and officers of the department of correction of all inmates committed by him to a workhouse or reformatory under indeterminate sentences whose eligibility for parole is to be considered at the next meeting of the commission. The parole commission shall so far as practicable, regard the convenience of said magistrates and judges in arranging its meetings for the consideration of the eligibility of persons for parole and in placing such cases upon its calendar for consideration. (*Amended by L. 1916, ch. 287, in effect Apr. 24, 1916.*)

§ 4. **Commitments; indeterminate sentences.**—After the creation of a parole commission in any of the said cities as hereinbefore provided, any person convicted of any crime or offense upon conviction for which the court may sentence to a penitentiary, workhouse, city prison, county jail

or other institution under the jurisdiction of the department of correction of said city, who shall not be committed in default of payment of a fine imposed, or for failure to furnish surety or sureties upon a conviction of disorderly conduct tending to a breach of the peace or of abandonment, and who is not insane or mentally or physically incapable of being substantially benefited by the correctional and reformatory purposes of any such institution shall, if sentenced to any institution under the jurisdiction of the department of correction in said city, be sentenced and committed to a penitentiary or a workhouse or a reformatory under the jurisdiction of the said department of correction. No person shall be committed to a penitentiary under the jurisdiction of a department of correction in any such city because of failure to pay any fine or fines imposed, or for failure to furnish surety or sureties, or to a penitentiary, reformatory or workhouse under the jurisdiction of a department of correction in any such city for a term of imprisonment with a fine imposed in addition to the term of imprisonment. The term of imprisonment of any person sentenced to any such penitentiary shall not be fixed or limited by the court in imposing sentence. The term of such imprisonment shall be terminated in the manner prescribed in section five of this act and not otherwise, and shall not exceed three years. The term of imprisonment of any person sentenced to any such workhouse shall be fixed by the court in imposing sentence which term shall be for a definite period and shall not exceed six months; provided, however, that no person convicted in any of said cities of vagrancy, disorderly conduct tending to a breach of the peace, public prostitution, soliciting on streets or public places for the purpose of prostitution, or the violation of section one hundred and fifty of chapter ninety-nine of the laws of nineteen hundred and nine, as amended, shall be sentenced to any such workhouse for a definite term until the fingerprint records of the city magistrates' courts of said city are officially searched with reference to the particular defendant and the results thereof duly certified to the court; and provided, further, that if it shall appear to the court at any stage of the proceeding prior to the imposition of sentence and after due notice and opportunity to the defendant to be heard in opposition to such accusation of prior convictions that any person convicted of any or each of these offenses last enumerated has been convicted of any or each of these offenses two or more times during the twenty-four months just previous, or three or more times previous to that conviction, then the court shall sentence such offender to a workhouse of the said department of correction in said city for an indeterminate period. The term of imprisonment of any person convicted and sentenced to any such workhouse for an indeterminate period shall not exceed two years and shall be terminated by the parole commission in the manner prescribed in section five of this act and not otherwise. Commitment to reformatories for male misdemeanants under the jurisdiction of a department of correction in any of the cities as aforesaid shall be made in conformity with laws providing for

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such institutions and commitments thereto. The term of imprisonment of persons so convicted and sentenced to reformatories shall be terminated by the parole commission in the manner prescribed in section five of this act and not otherwise.

Nothing in this section shall be deemed to interfere with or prevent the commitment of any person in accordance with law to a state institution or to any other institution not under the jurisdiction of a department of correction in any of the said cities which was on May tenth, nineteen hundred and fifteen, or now is or may hereafter be authorized by law to receive persons convicted in the courts in any of said cities. (*Amended by L. 1916, ch. 287, in effect Apr. 24, 1916.*)

§ 5. **Power of parole; investigations; records and statistics.**—The parole commission shall have power to parole, conditionally release, discharge, retake or reimprison without reference to the committing magistrate or judge, except as provided in section three of this act, any inmate of any workhouse or reformatory under the jurisdiction of the department of correction in said city, committed thereto under an indeterminate sentence; and to parole, conditionally release, discharge, retake or reimprison any inmate of any penitentiary under the jurisdiction of a department of correction in said cities, committed thereto under an indeterminate sentence, provided the judge or court who made such commitment to such penitentiary or any successor thereof shall, upon recommendation of the parole commission created in pursuance of this act, approve in writing such parole, conditional release or discharge of such inmate. The said commission shall have power to make all necessary rules and regulations not inconsistent with the laws of the state, prescribing the conditions under which eligibility for parole may be determined and under which inmates may be paroled, conditionally released, discharged, retaken and reimprisoned. The said commission and each and every member thereof shall have full power to compel the attendance of witnesses; to administer oaths; to examine such persons as may be necessary or expedient; to investigate or cause to be investigated the record, health, ability and character previous to commitment and during imprisonment of each inmate committed under an indeterminate sentence to any penitentiary, workhouse, or reformatory of the department of correction in said city. It shall also be the duty of the said commission to facilitate the establishment of a uniform system of records, reports, statistics and memoranda treating of persons charged with or convicted of crimes and offenses punishable by imprisonment in any of the correctional institutions of a department of correction of said city, and to make recommendations from time to time to the courts having criminal jurisdiction therein. (*Amended by L. 1916, ch. 287, in effect Apr. 24, 1916.*)

§ 6. **Abolition of existing parole boards or agents; transfers; peace officers.**—The appointment and qualification of members of the parole com-

mission in any of the cities as aforesaid shall abolish any existing board of parole, body or agent authorized to regulate the parole, discharge or reimprisonment of any person or persons committed under an indeterminate sentence to any institution under the jurisdiction of the department of correction of said city, and any board of parole, body or agent so abolished shall immediately deliver to such parole commission in said city, all papers, documents, records and other memoranda in its possession relating to inmates theretofore so committed, and jurisdiction over such inmates shall thereupon vest in such parole commission in accordance with the provisions of this act. All persons in the employ of any such board of parole, body or agent as aforesaid, on the first day of January, nineteen hundred and fifteen, in a position appearing in the competitive class of the civil service classification of the municipal civil service commission of said city or of the state civil service commission and still so employed at the time of the abolishment of such board of parole, body or agent as provided in this act, shall be transferred to and employed at the same rate of compensation by the superseding parole commission, and such persons shall perform such duties as directed by said parole commission. Upon the creation in any of said cities of a parole commission in pursuance of this act, the parole officers, superintendent, overseers, wardens, deputy wardens, instructors, head keepers, keepers, engineers, firemen, pilots, foremen of stables and drivers of the department of correction in said city shall be and become peace officers within the provisions of section one hundred and fifty-four of the code of criminal procedure. (*Amended by L. 1916, ch. 287, in effect Apr. 24, 1916.*)

CIVIL RIGHTS LAW.

(L. 1909, ch. 14.)

§ 40. Equal rights in places of public accommodation or amusement.

Exclusion of dramatic critics from theatres; when such exclusion not prohibited by Civil Rights Act.—At the common law a theatre, while affected by a public interest which justified licensing under the police power or for the purpose of revenue, is in no sense public property or a public enterprise. The proprietor does not derive from the state the franchise to initiate and conduct it. His right to and control of it is the same as that of any private citizen in his property and affairs, and he has the right to decide who shall be admitted or excluded. The rights conferred by the Civil Rights Act are expressly made subject to any conditions or limitations established by law which are applicable alike to all citizens. That act forbade that membership of any particular class of citizens should justify or permit exclusion from the enjoyment of the facilities or accommodations designated by it. Except as thus restricted, the rights of proprietors of theatres remained as at common law. Nor do the changes in the language of the act made by the amendment thereto (L. 1913, ch. 265) remove it from the effect of the decision of this court in *Grannan v. Westchester Racing Association* (153 N. Y. 449), holding that the legislature did not intend to confer upon every person all the rights, advantages and privileges in places of amusement or accommodation which might be enjoyed by another. Any discrimination not based on race,

creed or color does not fall within the condemnation of the statute. *Woollcott v. Shubert* (1916), 217 N. Y. 212, affg. 169 App. Div. 610, 154 N. Y. Supp. 643.

Where a person is refused admittance to a theatre, his sole right to redress rests upon sections 40 and 41 of the Civil Rights Law, for at common law there is no right to admittance to a theatre against the will of the owner. *Woollcott v. Shubert* (1915), 169 App. Div. 194, 154 N. Y. Supp. 643, revg., 90 Misc. 474, 154 N. Y. Supp. 754.

Where the plaintiff, a dramatic critic, was excluded from the defendant's theatre upon the ground that his criticisms were offensive, he cannot maintain a suit in equity to enjoin the defendant from continuing to refuse admittance. The plaintiff is not entitled to relief in equity upon the ground that the defendant's acts will lead to a multiplicity of suits, where no suit whatever to recover the statutory penalty has been brought, nor is he entitled to equitable relief upon the theory that the remedy provided by the statute is inadequate, that not being the case. *Woollcott v. Shubert* (1915), 169 App. Div. 194, 154 N. Y. Supp. 643, revg., 90 Misc. 474, 154 N. Y. Supp. 754; affd 217 N. Y. 212.

Dancing pavilion for social amusement; refusal to admit negroes; failure to prove tender of entrance fee.—The proper management of a dancing pavilion maintained as part of a recreation or picnic ground, a charge being made for the privilege of dancing, involves the admission of persons who are mutually congenial socially, and it is not a "place of public accommodation, resort or amusement" within the meaning of sections 40 and 41 of the Civil Rights Law forbidding the exclusion of any person on account of race, creed or color. Hence, the manager of such dancing pavilion is not liable for the penalty prescribed by the Civil Rights Law for refusing admittance to negroes. *It seems*, however, that it would be a violation of said statute to exclude any person from such pavilion if the entertainment furnished consisted of a spectacle of public dancing in which those admitted were not expected to participate personally. Moreover, as the statute is highly penal, there can be no recovery of the penalty therein prescribed without proof that the parties seeking admission to a place of public amusement actually tendered the entrance fee. *Johnson v. Auburn & Syracuse Electric R. R. Co.* (1915), 169 App. Div. 864, 156 N. Y. Supp. 93.

CIVIL SERVICE LAW.

(L. 1909, ch. 15.)

§ 9. Unclassified service; classified service.

Notice terminating period of employment at end of probationary period; ratification after probationary period.—Under the Civil Service Law, the rules of the municipal civil service commission of the city of New York and the Greater New York charter, a notice by a committee of the board of education terminating the employment of an accountant at the end of his probationary period is effective to terminate his connection with the department, although not ratified by the board until after the expiration of the probationary period. *Goldschmidt v. Board of Education* (1915), 170 App. Div. 395, 155 N. Y. Supp. 181.

§ 11. The classified city service.—The mayor of each city in this state shall appoint and employ suitable persons to prescribe, amend and enforce rules for the classification of the offices, places and employments in the classified service of said city, and for appointments and promotions therein and examinations therefor; and for the registration and selection of laborers for employment therein, not inconsistent with the constitution and the provisions of this chapter, and shall amend the same from time to time. Such persons shall be municipal civil service commissioners and shall constitute the municipal civil service commission of such city. All appointments or designations of municipal civil service commissioners shall be made in such manner that not more than two-thirds of such commissioners in any city shall at any time be adherents of the same political party. Such rules herein prescribed and established, and all regulations now existing for appointment and promotion in the civil service of said city, and any subsequent modification thereof, whether prescribed under the authority of a general law or of any special or local law, shall be valid and take or continue in effect only upon the approval of the mayor of the city and of the state civil service commission. The authority by this section conferred shall not be so exercised as to take from any policeman or fireman any right or benefit conferred by law, or existing under any lawful regulation of the department in which he serves. All examinations herein authorized shall be public, and all rules shall be published, and, with all the proceedings and papers connected with said examinations, shall be at all times subject to the inspection of said state commission and its agents; and said commission shall set forth in its report the character and practical effects of such examinations, together with its views as to the improvement and extension of the same, and also copies of all rules made under the authority hereby conferred. Subject to the provisions of this chapter and of said rules, the municipal commission of any city shall make regulations for and have control of examinations and registrations for the service of such city, and shall supervise and preserve the records of the

same. In case for any reason, the mayor of any city within sixty days after he has the power to appoint, fails to appoint such municipal commissioners, the state commission shall appoint them to hold office until the expiration of the term of the mayor then in office and until their successors are appointed and qualify. It shall be the duty of such persons to prepare and to procure the approval of the rules herein provided for, and, if they fail to do so within sixty days after their appointment, the state commission shall forthwith make said rules. It shall be the duty of such persons to make reports from time to time to the state commission, whenever said commission may request, of the manner in which this law, and the rules and regulations thereunder, have been and are administered, and the results of their administration in such city, and of such other matters as said commission may require, and annually on or before the fifteenth day of January, to make such a report to said commission; and it shall be the duty of said state commission in its annual report to set out either these reports, or a sufficient abstract or summary thereof, to give full and clear information as to their contents. A copy of the roster of the classified civil service of such city shall be transmitted to the state commission with the annual report aforesaid, and shall be filed in the office of said commission as a public record. The municipal commission of each city, for the purpose of investigating the enforcement and effect of the civil service law and the rules and regulations prescribed thereunder in the service of such city, shall have the same powers that are granted to the state commission by the third and fourth subdivisions of section six of this act. The mayor may at any time remove any municipal civil service commissioner appointed by him. Said state commission may also, by unanimous vote of the three commissioners, with the written approval of the governor, remove any municipal civil service commissioner appointed or employed under the authority of this section, for incompetency, inefficiency, neglect of duty or violation of the provisions of this chapter, or of the rules and regulations in force thereunder, or of any of them, specifying in writing the particulars of the incompetency, inefficiency, neglect of duty or violation charged, and filing the same as a public document in the office of the city clerk, or if there be no city clerk, in the office of the clerk of the board of aldermen, and a certified transcript thereof in the office of the state civil service commission, first giving such commissioner an opportunity to make a personal explanation in self-defense. Whenever a municipal civil service commissioner has been removed by the unanimous vote of the three state commissioners, with the written approval of the governor, or whenever any municipal commissioner shall resign or be removed by the mayor pending an investigation by the state commission of the administration of the civil service of the city in which such person is a municipal commissioner, or whenever any municipal commissioner shall resign or be removed by the mayor pending a hearing by the state commission of charges preferred against such municipal commissioner, the

state commission and not the mayor of such city shall have power to appoint persons to fill such vacancies, and such persons so appointed by the state commission shall hold office as municipal civil service commissioners of such city until the expiration of the term of the mayor then in office and until their successors are appointed and qualify. Said state commission may at any time, by unanimous vote of the three commissioners, amend or rescind any rule, regulation or classification prescribed under the provisions of this section, provided that said state commission shall state the reasons for such action in writing and file the same and a certified transcript thereof as a public document as hereinbefore provided, and give an opportunity to the municipal civil service commissioners concerned to make a personal explanation and to file papers in opposition to such action. The said state commission, however, shall not take such action upon any ground other than that the provisions or purposes of this chapter are not properly or sufficiently carried out by such rule, regulation or classification, nor without specifying in writing and detail in what particular such provisions or purposes are not carried out, nor shall said state commission exempt from competitive examination any position or place or employment in any city without the consent of the municipal commission of such city. (*Amended by L. 1916, ch. 357, in effect May 1, 1916.*)

§ 12. Classification.

The classification of positions by the State Civil Service Commission not being palpably illegal, must be regarded as final and treated as a proper classification by the head of a department making appointments. Att'y. Gen'l. Opin., 5 State Dep. Rep. 554 (1915).

§ 14. The competitive class.

Upon the creation of a position it automatically passes into the competitive class, and exemptions arise only by affirmative action of the Civil Service Commission or by direct statutory mandate. Att'y. Gen'l. Opin. (1915), 4 State Dep. Rep. 567.

Dismissal of veteran volunteer fireman and transfer of duties to exempt employee not violation of section.—Relator, a veteran volunteer fireman holding a position in the competitive class in the department of water supply, etc., of the city of New York, was dismissed or suspended in consequence of the reduction of the number of employees in that department. Held, that as relator's duties were not necessarily appurtenant to his position or to any position in the competitive class, the transfer of some of such duties to an employee holding a position in the exempt class was not a violation of the provision of this section that "no person shall be transferred to, or assigned to perform the duties of, any position subject to competitive examination, unless he shall have previously passed an open competitive examination equivalent to that required for such position, or unless he shall have served with fidelity for at least three years in a similar position," nor did the facts justify the inference as matter of law that relator's dismissal or suspension was in bad faith, and no case was made out for the granting of a peremptory writ of mandamus to compel his reinstatement. *People ex rel. Skilton v. Smith* (1915), 91 Misc. 131, 154 N. Y. Supp. 288.

§ 15. Exemptions from competitive examination.

Appointment in competitive class without examination; suspension of rules; removal of appointee for economical reasons.—Where, at the request of a public

officer, the State Civil Service Commission suspends the rules pursuant to subdivision 2 of this section so as to permit the appointment of a person to a position in the competitive class without examination upon the ground that peculiar and exceptional qualifications are required, the appointee is *pro hac vice* placed in the non-competitive class, and, hence, becomes subject to removal under circumstances applicable to persons in such class. Thus, such appointee is not entitled to be reinstated upon the ground that he was removed from his position without notice. Even assuming that such appointee would be entitled to notice and an opportunity to explain before his removal, he is not entitled to reinstatement where he was not removed for any delinquency, but through motives of economy, there being no work for him to do. *People ex rel. Rosenthal v. Travis* (1915), 169 App. Div. 203, 154 N. Y. Supp. 403.

Authority of city civil service commission to divide applicants qualified for promotion in clerical positions into separate lists according to residence in boroughs.—The civil service commission of the city of New York has no authority to divide, after an examination, those thereby qualified for promotion in clerical positions into separate eligible lists, according to their residences in the different boroughs, and to prefer those from one of such residential lists to the exclusion of others not upon such list, who are entitled to preference by the result of such examination, or by other qualifications, such as being a veteran. Section 18 of the Civil Service Law does not authorize such a division, for it relates to appointments, not promotions, and is confined to the labor class in cities, and a clerk is not a laborer within the contemplation of such section. Hence, an honorably discharged veteran sailor of the Civil war employed as a clerk in the street cleaning department of the city of New York whose rights have been prejudiced by the division of eligible lists according to the boroughs, and the subsequent promotion of clerks not veterans, may apply for an alternative writ of mandamus. *People ex rel. Franklin v. Fetherston* (1915), 168 App. Div. 416, 153 N. Y. Supp. 325.

§ 16. Promotion; transfer; reinstatement; reduction.

The term "promotion" means the assignment of a person to a higher or more responsible position in the service, with or without increase in salary. *Att'y. Gen'l. Opin.*, 5 State Dep. Rep. 495 (1915).

When increase of salary amounts to promotion of employee to next grade without examination.—The civil service commission of the city of New York refused to certify a payroll as to the relator because it provided for a salary increased beyond the minimum of the grade next higher than that in which the salary he had been receiving placed him, and constituted, they asserted, a promotion. On examination of the statute, the rules of the commission and the grading adopted by that body, *held*, that the commissioners were lawfully empowered to prescribe grades in a position by the annual compensation attaching to each, and that an increase of salary exceeding the minimum of the next higher grade was a promotion which should not be made without a competitive examination and a place upon the eligible list. *People ex rel. Perrine v. Connolly* (1916), 217 N. Y. 570.

Competitive examination preliminary to promotions.—The provisions for competitive examination preliminary to promotions, contemplates promotions to fill vacancies, and increases of salary "beyond the limit fixed for the *grade* in which such office or position is classified." *Att'y. Gen'l. Opin.*, 5 State Dep. Rep. 495 (1915).

When officeholder transferred to another position in same office not required to submit to competitive examination.—The Civil Service Law does not, nor do the rules, forbid a simple rearrangement in the force of a public office without increase of pay or rank of the person affected by the change. The transfer of one holding the position of stenographer and private secretary in a public office to that of clerk in the same office, at the same salary, is not a promotion within the terms of rule

14 of the state civil service commission and the one transferred is not required to submit to a competitive examination. *People ex rel. Rudd v. Cropsey* (1915), 215 N. Y. 451.

§ 21. Preference allowed honorably discharged soldiers, sailors and marines.

Veterans of Spanish War; mandamus.—The relator, a veteran of the Spanish War, on December 6, 1910, was appointed a mortgage tax appraiser in the civil service and served in such position until July 31, 1914, from which time he was out of service until May 24, 1915, when he was restored to his former position. On his application for a mandamus to reinstate him for the time he was out of service and to pay him the salary of the position during that time, it appeared that he was not actually removed from the position, but about the first of July, 1914, his salary, which had theretofore been \$1,800 a year, was reduced by the state board of tax commissioners to \$900 a year. Relator treated the reduction as a removal and withdrew from the position and the board regarded his withdrawal as a resignation. It further appeared that there were two other mortgage tax examiners at the time in the office of the tax commissioners. The salary of neither of them was reduced and no question was made as to the qualification of relator. Held, that a mandamus might issue compelling the state board of tax commissioners to restore relator's salary for the period he was out of the position to \$1,800, or to reinstate him. *People ex rel. Jones v. Saxe* (1915), 92 Misc. 409, 156 N. Y. Supp. 975.

When veteran of Spanish War not entitled to be retained in his position in preference to other employees not veterans.—Upon a reduction of the force in the department of water supply, etc., of the city of New York a veteran of the Spanish War is not entitled to be retained in his position of assistant engineer in preference to other employees who are not veterans. Where relator, before being advised as to his probable dismissal, had applied for a transfer to a position made vacant by the retirement of the holder in preference to one not a party to the present proceeding, his petition for reinstatement does not entitle him to a transfer to said position. *People ex rel. Wagner v. Williams* (1915), 91 Misc. 135, 154 N. Y. Supp. 295, 93 Misc. 296, 156 N. Y. Supp. 977.

A veteran of the Civil War is by the Constitution and statute given the right of preference in appointment irrespective of his standing on the eligible list, but an exempt fireman is accorded no such preference and his only right superior to that of others is that when once permanently appointed he cannot be discharged except on charges, and after a hearing, and if the position be abolished he is entitled to be assigned to some other position for which he may be fitted. *People ex rel. Zieger v. Whitehead* (1916), 94 Misc. 360, 157 N. Y. Supp. 563.

Appointment of exempt fireman.—The designation from the eligible list of an exempt fireman to the position of foreman in the highway department of the city of Niagara Falls, for a probationary term of three months, is not tantamount to an "appointment or employment" within the meaning of this section, and he may be discharged or his services dispensed with at any time even before the expiration of the term. *People ex rel. Zieger v. Whitehead* (1916), 94 Misc. 360, 157 N. Y. Supp. 563.

§ 21-a. Retiring veterans of the late civil war and granting them pensions.—Every soldier, sailor or marine of the army or navy of the United States in the late civil war, honorably discharged from service, who shall have been employed for a continuous period of ten years or more in the civil service of the state of New York, and who shall have reached the age of seventy years, upon his own request, or if employed in manual labor,

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upon becoming incapacitated for performing manual labor, shall be retired from his employment by the state of New York, and thereafter and during his life, the state department or institution which employed him at the time of his retirement, shall pay to him, in the same manner that the salary or wages of his former position were customarily paid to him, an annual sum equal in amount to one-half the salary or wages paid to him in the last year of his employment; provided, however, that the amount so to be paid to such retired veteran shall not exceed the sum of one thousand dollars per annum. (*Added by L. 1916, ch. 438, in effect May 9, 1916.*)

§ 22. Power of removal limited.

The provision relating to veterans of the Spanish-American war does not give them a preference "in appointment and promotion" which includes a preference "in retention" but provides only that no such veteran who holds a position, etc., shall be removed except for incompetency or misconduct shown after a hearing upon due notice and stated charges and that if his position is abolished or becomes unnecessary for reasons of economy or otherwise he shall be transferred to any branch of the service he shall be fitted to fill, meaning in case a vacancy exist; otherwise his name shall be put on a special list. *Matter of Reilly v. Smith (1915), 92 Misc. 309, 156 N. Y. Supp. 686.*

Discharge of employee of Highway Department; failure to assert rights as veteran; mandamus.—Where an employee in the Highway Department was discharged after having been given an opportunity to explain an expense voucher filed by him and alleged to have been false, the Highway Commissioner being at the time ignorant of the fact that the employee was a Spanish War veteran and entitled to preferential consideration, and the Commissioner reinstated him after learning that he was a veteran, but the employee, who had been idle for four months, delayed another twenty days, and then applied for a writ of mandamus requiring the payment of his salary during the time of his discharge, the writ should be denied. As the relator did not notify the Commissioner that he was a veteran at the time of the hearing or claim any rights as such, it is immaterial that he had previously filed with the department papers showing that he was an honorably discharged veteran. *Knapp v. Duffey (1915), 169 App. Div. 794, 155 N. Y. Supp. 818.*

Rights of volunteer firemen; transfer of duties to another; when action of commissioner of water supply will not be interfered with by court.—The rights of a veteran volunteer fireman holding the position of assistant engineer in the department of water supply, etc., of the city of New York are prescribed by section 22 of the Civil Service Law and he is not entitled, upon a reduction of the force, to be retained until all non-veterans holding positions similar to his have been dismissed. The transfer of relator's duties to another assistant engineer already in the department was not the appointment of any one in his place, nor was the continuation of an engineer in another borough to do similar work at a reduced salary a denial of relator's right to a preference in appointment. The action of the commissioner of the department of water supply, etc., in reducing the number of employees in his department in the interest of economy will not be interfered with by the court. *People ex rel. Osterhout v. Williams (1915), 91 Misc. 95, 154 N. Y. Supp. 331.*

When head of a department may reduce number of positions; when application for reinstatement denied.—Under the Civil Service Law the head of the department of water supply, etc., of the city of New York, acting in good faith, may reduce the number of positions in his department, suspend the incumbents and assign their duties to other employees of the department in the competitive class. Where

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relator, holding a position in the competitive class in said department, was dismissed in pursuance of a plan for the reduction of the number of employees owing to the need of retrenchment, and his work was not given to employees in the non-competitive or exempt class or to any employee to whose position or title such work was inappropriate, his application for reinstatement will be denied. *Colligan v. Williams* (1915), 91 Misc. 128, 154 N. Y. Supp. 329.

Removal; suspension for lack of work or appropriation.—Laying off or suspension for lack of work or lack of appropriation, no one else being appointed to fill the position, is in effect abolishing the position and not a removal within the meaning of the statute. *Matter of Reilly v. Smith* (1915), 92 Misc. 309, 156 N. Y. Supp. 686.

Where petitioner for a writ of mandamus to compel his reinstatement in the civil service claims to have been removed without a hearing but concedes and alleges that he received a letter "laying him off" on the ground of lack of work and lack of appropriation and for the purpose of reducing the force and does not specifically deny that his services were dispensed with for lack of appropriation or work or that his removal was in bad faith for the purpose of removing him without a hearing, his application will be denied. *Matter of Reilly v. Smith* (1915), 92 Misc. 309, 156 N. Y. Supp. 686.

§ 25. Recommendations for appointment or promotion.

It was not intended by this section that one holding a civil service position should be under no obligation to "render any political service" in the most comprehensive use of the word "political." It was merely intended to separate the civil service of the State from the political obligations of the individual, and not to keep in office every civil service employee, no matter how detrimental he might be to the orderly administration of the affairs of the State. *People ex rel. Goldschmidt v. Travis* (1915), 167 App. Div. 475, 152 N. Y. Supp. 1058.

Mandamus; where removed for political reasons.—One holding an office in the competitive class of the state civil service who is removed solely for political reasons is entitled to reinstatement, and on review of conflicting authorities, *held*, that mandamus is the only and appropriate remedy for that purpose. *People ex rel. Somerville v. Williams* (1916), 217 N. Y. 40, revg. 170 App. Div. 124, 155 N. Y. Supp. 653.

An examiner of municipal accounts in the office of the State Comptroller, belonging to the competitive class, but not being a veteran or exempt fireman, who has been removed because he gave to a newspaper a copy of a portion of a report made by him to the Comptroller, but which had been eliminated from the report after it reached the Comptroller's office, is not entitled to a writ of mandamus ordering his reinstatement, upon the ground that his removal was for political reasons within the meaning of this section, where there is no claim that he was removed for any other cause, or that he did not have an opportunity to make an explanation. *People ex rel. Goldschmidt v. Travis* (1915), 167 App. Div. 475, 152 N. Y. Supp. 1058.

§ 26. Political assessments prohibited.

Receiving political contributions.—See *People ex rel. Johnson v. Connolly* (1915), 168 App. Div. 919, 152 N. Y. Supp. 495.

COMMERCIAL FEEDING STUFFS.

Agricultural L., §§ 160-161.

COMMISSION MERCHANTS.

Money recovered on bond; Agricultural L., § 284.

COMMISSIONERS OF DEEDS.

See Notaries Public.

CONSERVATION LAW.

(L. 1911, ch. 647.)

§ 2. **Conservation department.**—The conservation department is hereby created and shall have three divisions. The department shall continue to be in charge of a commission to be known as the conservation commission which, except as otherwise provided in this chapter, shall have all the powers and be subject to all the duties of the forest purchasing board, the forest, fish and game commission or commissioner, the commissioners of water power on Black river and the state water supply commission as fixed by law on July eleventh, nineteen hundred and eleven. In addition to the powers and duties hereinbefore enumerated, the conservation commission shall have all the powers and be subject to all the duties of the commissioners of the state reservation at Saratoga Springs as fixed by law on January first, nineteen hundred and sixteen. The commission shall hereafter consist of one member to be appointed by the governor, by and with the advice and consent of the senate. The governor may remove the commissioner for inefficiency, neglect of duty or misconduct in office, giving to him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel in his own defense, upon not less than ten days' notice. If such commissioner shall be removed the governor shall file in the office of the secretary of state a complete statement of all charges made against such commissioner and his findings thereon, together with a complete record of the proceedings. A commissioner shall be appointed hereunder within twenty days after the amendment to this section takes effect. The regular term of office of the commissioner shall be six years to be computed from the first day of January of the calendar year in which he shall have been appointed. The commissioner shall receive an annual salary of eight thousand dollars. The terms "commission," "conservation commission" and "commissioner," when used in this chapter, except article seven thereof, shall each mean the conservation commissioner, and wherever by the terms of this chapter or any other statute, action by the conservation commission is required to be taken by resolution or in any manner by the concurrence of a majority of the members, such action shall be taken by a formal order of such commissioner entered in the records of the conservation department. The term "commission" as used in article seven shall mean a commission consisting of the conservation commissioner or a deputy designated by him, the attorney-general or a deputy designated by him, and the state engineer or a deputy designated by him. (*Amended by L. 1915, ch. 318, and L. 1916, ch. 257, in effect Apr. 19, 1916.*)

§ 22. **Structures for impounding water; inspection of docks; penalties.**—

No structure for impounding water, not a part of the canal system of the state, and no dock, pier, wharf or other structure used as a landing place on waters not a part of the canal system of the state, shall be erected or reconstructed by any public authority or by any private person or corporation without notice to the commission, nor shall any such structure be erected, reconstructed or maintained without complying with such conditions as the commission may by order prescribe for safeguarding life or property against danger therefrom. No order made by the commission shall be deemed to authorize any invasion of any property rights, public or private, by any person in carrying out the requirements of such order. The commission shall have power, whenever in its judgment public safety shall so require, to make and serve an order directing any person, corporation, officer or board, constructing, maintaining or using any structure hereinbefore referred to, to remove, repair or reconstruct the same within such reasonable time and in such manner as shall be specified in such order, and it shall be the duty of every such person, corporation, officer or board to obey, observe and comply with such order and with the conditions prescribed by the commission for safeguarding life or property against danger therefrom, and every person, corporation, officer or board failing, omitting or neglecting so to do, or who hereafter erects or reconstructs any such structures hereinbefore referred to without submitting to said commission and obtaining its approval of plans and specifications for such structures when required so to do by order of the commission or who hereafter fails to remove, erect or to reconstruct the same in accordance with the plans and specifications so approved shall forfeit to the people of this state a sum not to exceed five hundred dollars to be fixed by the court for each and every offense; every violation of any such order shall be a separate and distinct offense, and, in case of a continuing violation, every day's continuance thereof shall be and be deemed to be a separate and distinct offense. This section shall not apply to a dam where the area draining into the pond formed thereby does not exceed one square mile, unless the dam is more than ten feet in height above the natural bed of the stream at any point or unless the quantity of water which the dam impounds exceeds one million gallons; nor to a dock, pier, wharf or other structure under the jurisdiction of the department of docks, if any, in a city of the first class. (*Amended by L. 1913, ch. 736, L. 1914, ch. 315, and L. 1916, ch. 298, in effect Apr. 25, 1916.*)

§ 29. **Proceeds of actions under article five; moiety.**—Moneys received in an action for penalty brought under article five of this chapter, or upon the settlement or compromise thereof, and fines for violation of any of the provisions of said article shall be paid within thirty days after the receipt thereof to the commission. The commission shall apply so much thereof as may be necessary to the payment of the expenses of collection and shall pay one-half of the balance, in cases brought by special game protectors, to the special game protector upon whose information the action

L. 1916, ch. 521.

Punishment for misdemeanor; penalties.

§§ 32, 36.

was brought. Regular protectors shall not receive moieties. The commission in its discretion may settle or compromise any action to recover any penalty provided for in said articles, or a cause of action therefor, at such sum as it may deem advantageous to the state. The commission may, out of moneys arising from such fines or penalties, pay the fees of magistrates and constables for services performed in criminal actions brought upon information of a game protector, district forest ranger, forest ranger, or fire warden. (*Added by L. 1912, ch. 444, and amended by L. 1916, ch. 521, in effect May 12, 1916.*)

§ 32. Punishment for misdemeanor.—A person convicted of a misdemeanor under this chapter, except as otherwise provided herein, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars; and if such fine is not paid, he shall be imprisoned in a county jail or penitentiary until such fine is satisfied; which imprisonment shall be at the rate of one day for every dollar of such fine; if any person be convicted a second time of a misdemeanor under this chapter, except as otherwise provided herein, he shall be punished either by a fine of not less than twenty-five dollars nor more than one hundred and fifty dollars; or by imprisonment in a county jail or penitentiary for not more than one hundred days, or by both such fine and imprisonment; if a fine imposed be not paid, he shall be imprisoned in a county jail or penitentiary until such fine is satisfied, which imprisonment shall be at the rate of one day for every dollar of such fine; if a person shall be convicted a third time of a misdemeanor under this chapter, unless otherwise provided herein, he shall be punished by imprisonment in a county jail or penitentiary for not less than ten days nor more than six months; and by a fine of not less than ten dollars nor more than one hundred dollars; and if the fine imposed be not paid, he shall be imprisoned in a county jail or penitentiary until such fine is satisfied; which imprisonment shall be at the rate of one day for every dollar of such fine and shall be in addition to the prison sentence. (*Added by L. 1912, ch. 444, and amended by L. 1916, ch. 521, in effect May 12, 1916.*)

§ 36. Compromise of civil penalty before magistrate.—Any regular or special game protector, fisheries protector, fire superintendent, forest ranger or inspector, who shall charge a person with any violation under this chapter, may take such person before any magistrate in the county where the violation occurred, and thereupon such person may, upon the consent of the representative of the conservation commission making the charge, compromise and settle his liability for civil penalties under this chapter, for an amount agreed upon between said magistrate, the representative of the commission and the person charged with such violation, which amount shall not be less than ten dollars nor more than the amount for which such person would be liable in a civil action for penalties. If such compromise be made, such person shall forthwith subscribe his name

to a statement setting forth concisely the facts constituting such violation. the amount agreed upon, and that a judgment may be entered against him for that sum. Upon said statement being sworn to before and filed with said magistrate, he shall forthwith enter in his civil docket a record of the proceedings and the amount of the judgment.

Said justice shall upon the entry of such judgment be entitled to a fee of one dollar to be paid by the person charged with such violation.

A judgment entered as provided herein may be enforced by an execution against the property of the defendant; but no body execution shall issue thereon. Such judgment shall be a bar to a criminal action for the same violation, if satisfied within thirty days from the date of the entry thereof. (*Added by L. 1916, ch. 521, in effect May 12, 1916.*)

ARTICLE IV.

(Article 4, as amended, repealed and new article added by L. 1916, ch. 451, in effect May 9, 1916.)

LANDS, FORESTS AND PUBLIC PARKS.

Section 50. Powers and duties of the commission.

51. Personnel and duties.
52. Fire districts.
53. Fire moneys and accounts.
54. Forest fire prevention.
55. Railroads in forest lands.
56. Damages on account of forest fires.
57. Exemption of reforested land from taxation.
58. Report of forest products.
59. Appropriation of lands.
60. Communal forests.
61. Use of forest preserve restricted.
62. Definitions.
63. Penalties.
64. Saving clause.
65. Laws repealed.
66. When take effect.

§ 50. Powers and duties of the commission.—The commission shall, for the purpose of carrying out the provisions of this article, have the following power, duty and authority:

1. Have the care, custody and control of the several preserves, parks and other state lands described in this article.
2. Make necessary rules and regulations to secure proper enforcement of the provisions hereof.
3. Establish, operate and maintain nurseries for the production of trees to be used in reforestation. Such trees may be used to reforest any land owned by the state; supplied to owners of private land at a price not exceeding cost of production; or used for planting on public lands under such terms as may be deemed to be for the public benefit.

4. Prepare, print, post or distribute printed matter relating to forestry.
5. Make investigations or experiments with regard to forestry questions.
6. Purchase, subject to the approval of the governor, lands, forests, rights in timber or any interest therein, situated within the Adirondack or the Catskill parks or lands contiguous, connected with or adjacent to either park.
7. Receive and accept in the name of the people of the state, by gift or devise, the fee or other estate therein of lands or timber or both, for forestry purposes.
8. Examine the forest lands under the charge of the several state institutions, boards or other management for the purpose of advising and co-operating in securing proper forest management of such lands.
9. Employ, with the approval of the superintendent of prisons, convicts committed to any penal institution or, with the approval of the governing board thereof, the inmates of other state institutions, for the purpose of producing or planting trees. Such portion of the proceeds of the sale of trees grown at state institutions, as the commission determines is equitable, may be paid over to that institution.
10. Propagate trees and shrubs for the several state institutions or for planting along improved highways. Any common carrier may transport trees or shrubs grown by the state at a rate less than the established tariff.
11. Bring any action or proceeding for the following purposes:
 - (a) Any action or proceeding, for the purpose of enforcing the state's rights or interests in real property, which an owner of land would be entitled to bring in like cases.
 - (b) Such actions or proceedings as may be necessary to insure the enforcement of the provisions of this article.
 - (c) To determine in trespass, ejectment or other suitable actions the title to any land claimed adversely to the state.
 - (d) Bring proceedings before the comptroller or bring actions to cancel tax sales or to set aside cancellations of tax sales.
12. May compromise or adjust any judgment or claims arising out of violations of any provisions of this article, except where title to land is involved.
13. Have the custody of all abstracts of title, papers, contracts or memoranda relating thereto, except original deeds to the state, for any lands purchased for forest preserve purposes.
14. Examine private forest lands for the purpose of advising the owners as to the proper methods of forest management.
15. Survey, map and determine boundaries of lands owned by the state.
16. Maintain a system of forest fire protection in the fire towns and such other areas as the commission determines necessary.
17. Purchase necessary equipment, tools or supplies, employ men or incur other expenses as may be necessary to furnish adequate forest fire protection.

18. Establish, maintain, equip and operate forest fire observation stations, telephone lines or other structures therefor as the public interest requires.

19. Make contracts, agreements or purchases either for construction, operation or maintenance of telephone lines for fire protection purposes. Any telephone company may grant the state a preferred rate.

20. With consent of the owner build or improve fire roads, ditches, trails or fire lines. No action for trespass shall lie on account of injury to private property on such account, if the act is performed in the protection of the forests from fire.

21. Appoint necessary employees to perform such duties as are required by this article.

22. May order removed from service, on forty-eight hours' notice, any railroad locomotive, operating in the fire towns, not properly equipped with fire protective devices.

23. May grant an extension of time in which owners may comply with subdivision two of section fifty-four, when the commission is satisfied that such an extension of time will not endanger the forests to fire, but in no case shall an extension be granted for a period of more than six weeks from the time of cutting.

24. May relieve railroads from maintaining railroad fire patrol, or clearing rights of way when in the judgment of the commission the absence of such patrol or clearing will not subject the forests to fire menace.

25. May request the public service commission to hear and determine whether any railroad, person or company operating railroad locomotives through forest land is using such devices and precautions against the setting of forest fires, as the public interest requires.

26. May designate persons who shall have authority to issue permits as required by subdivision five, section fifty-four.

27. May enter into working agreements with land owners for the purpose of securing better forest fire protection in the fire towns.

28. May make rules, regulations and issue permits for the temporary use of the forest preserve.

29. Shall have such other powers and duties as are provided by law.

30. Reimburse employees for actual and necessary expenses incurred while upon official business. (*Added by L. 1916, ch. 451, in effect May 9, 1916.*)

§ 51. Personnel and duties.—For the purpose of administration and to carry out the provisions of this article, the following employees are hereby authorized and their duties defined.

1. A superintendent of forests, who shall receive an annual salary of four thousand dollars per annum and who shall, subject to the direction of the commission, administer all of the provisions of this article.

2. An assistant superintendent of forests, who shall receive a salary

of two thousand five hundred dollars per annum; and who shall assist the superintendent of forests in the performance of his duties, and, in the absence or inability of the latter, shall have power to act in his place.

3. A chief land surveyor, who shall receive a salary of two thousand four hundred dollars per annum; and who shall, under the direction of the superintendent of forests, have charge of locating and determining the boundaries of state land.

4. Five foresters, who shall perform such duties in reforestation, fire protection, surveys, investigations, preparation of publications and other branches of forestry as may be required.

5. Such assistant foresters as may be required, who shall assist the foresters in their duties, and perform such other duties as may be assigned them.

6. A forest pathologist, who shall examine forest trees with respect to disease, and carry on such studies as may be deemed advisable in connection with diseases attacking or liable to attack forest trees in this state. The forest pathologist shall have pursued a thorough course in forest pathology.

7. Two chief railroad inspectors, who shall inspect railroad locomotives and other engines, railroad rights-of-way, and perform such other duties as may be assigned them. They must be familiar with the construction of locomotives and experienced in their operation.

8. A land clerk at two thousand dollars per annum, who shall be employed in filing and preparing records of state's title to lands and perform such other duties as may be assigned him.

9. An auditor of fire accounts, who shall receive a salary of one thousand eight hundred dollars per annum. He shall audit fire bills and accounts of the forestry bureau, and perform such other duties as may be required. He shall execute and file with the comptroller a bond to the people of the state in the sum of five thousand dollars for the faithful performance of his duties and that he will account for and pay over pursuant to law all moneys received by him.

10. Five district forest rangers, who shall receive a salary of fifteen hundred dollars per annum, and each of whom shall have charge of a certain portion of the fire towns, to be known as a fire district, for the purpose of securing forest fire protection and preventing trespass upon state land.

11. Such forest rangers as may be necessary, to be employed in the fire towns at monthly salaries of not exceeding seventy-five dollars; the salary of such employees shall be fixed and determined by the conservation commission.

12. Such observers as may be required to operate the forest fire observation stations, to be employed at a monthly compensation of not exceeding seventy-five dollars including allowance for expenses. The conservation commission shall fix and determine the compensation of these employees.

13. Necessary fire wardens, who shall, when fires are actually burning,

have power and authority to take steps to extinguish fires. They shall be paid at the rate of twenty-five cents per hour for time actually employed.

14. District forest rangers, forest rangers, observers, fire wardens and game protectors or any other officer charged with the duty of fire fighting may, when necessary, employ men who shall be paid at the rate of fifteen cents per hour and teams to fight forest fires, and also engage other men to be known as foremen for particular fires to direct the work of men engaged in fighting such fires. Such foremen shall be paid at the rate of twenty-five cents per hour for time actually employed. These employees may incur other necessary expenses in connection with extinguishing forest fires. They shall have the power to summon any male person of the age of eighteen years and upwards to assist in fighting such fires, and any person so summoned shall forthwith proceed to help extinguish the fire as directed by the person summoning him.

15. The employees enumerated in subdivisions one, two, four and five of this section shall be trained foresters. The positions enumerated in subdivisions one and two shall in case of vacancy be filled by promotion examination. The employees enumerated in subdivisions one, two, three, four, five, six, seven, and eight of this section shall be under the competitive civil service classification. Those persons employed under subdivisions eleven, twelve and thirteen of this section, who are temporary, occasional or emergency employees, shall not be under competitive civil service classification.

16. The employees enumerated in subdivisions one, two, three, four, seven, ten, eleven and twelve of this section shall have the power to arrest without warrant any person committing a misdemeanor under the provisions of this article, and may take such persons immediately before a magistrate having jurisdiction for trial, and exercise such other powers of peace officers as may be necessary for the enforcement of the provisions of this article. No employees shall compromise or settle any violation of this article without the order of the commission. (*Added by L. 1916, ch. 451, in effect May 9, 1916.*)

§ 52. Fire districts.—The following classification of districts is made for the purpose of protecting the forests from fire.

1. Fire towns. The commission, for the prevention of forest fires and the extinguishment of fires burning or threatening forests, shall, in the fire towns, maintain a force of forest rangers, observers and fire wardens. It shall maintain an approved fire protective system, including fire observation stations and other equipment necessary to prevent and extinguish forest fires. The territory included within the fire towns shall be divided into fire districts, each of which shall be in charge of a district forest ranger.

2. Fire districts. The commission may establish a forest fire protective system in such other parts of the state as it may deem necessary where there are contiguous areas of forest land aggregating seventy-five thou-

sand acres or upwards. In such regions the commission may establish, equip and operate fire observation stations with the necessary accessories, prepare and post fire notices, organize a fire protective force, and require the town authorities to perform their duties in forest fire protection. If the town supervisor fails to certify to the conservation commission by February fifteenth of any year a list of the fire wardens for such town then the conservation commission may appoint necessary fire wardens.

3. Towns generally. In the towns other than the fire towns the town supervisor shall be superintendent of fires in his town and he shall be charged with the duty of preventing and extinguishing forest fires. He shall have the power and is hereby required to appoint necessary and competent fire wardens. On or before February fifteenth of each year, the town supervisor shall state to the commission, in writing, the names of the persons whom he appoints to act as fire wardens during the current calendar year. (*Added by L. 1916, ch. 451, in effect May 9, 1916.*)

§ 53. Fire moneys and accounts.—In order to carry into effect the provisions of this article the following is prescribed.

1. Temporary loan. The state comptroller shall have, subject to the approval of the governor, the authority to make, on behalf of the state, a temporary loan not exceeding one hundred thousand dollars in any fiscal year, for the use of the conservation commission in protecting the forests and extinguishing fires as provided by this article upon the certification of the conservation commission that an emergency exists whereby through insufficiency of appropriations it is found to be impossible to protect the forests from fire. The comptroller shall thereupon borrow such sums as may be directed by the governor for such purposes and shall report such transactions to the legislature which shall thereupon appropriate the moneys borrowed. Section thirty-five of the finance law shall not apply to any indebtedness so incurred.

2. Payment of fire bills. All salaries and other expenses incurred by the commission and its employees in protecting the forests in the fire towns from fire shall be paid by the state.

3. Rebate by fire towns. One-half of all expense incurred under subdivision two of this section in extinguishing fires actually burning, except salaries and expenses of regular employees, shall be a charge upon the town in which the fire burned. The commission shall, on or before November twentieth of each year, transmit to the clerk of the board of supervisors of each county containing fire towns a summary statement of expenses incurred together with the amount charged against each town in such county. The said clerk shall immediately deliver such statement to the board of supervisors who shall thereupon levy the said amount due from each town to the state upon the taxable property of such town by including the said amount in the sums to be raised and collected in the next levy and assessment of taxes therein, and the same shall be collected

as other town taxes are collected and the amount due the state shall be paid by the supervisor to the conservation commission on or before May first following the levy thereof.

4. May pay accounts. If any person incurs expenses fighting forest fires in a fire town, the commission may upon the receipt of satisfactory proof and accounts filed in its offices within sixty days from the time the expense was incurred audit and pay all or such portion thereof as in its judgment the public interest requires.

5. Recovery of expenses. Any moneys necessarily expended by the state, a municipality, or any person in fighting forest fires may be sued for by the state, municipality or person expending the same and recovered from the person causing the fire. Such actions may be maintained in addition to other actions for damages or penalties and may be demanded in the same or separate actions.

6. Certain towns raise fire fund. Towns other than fire towns may raise necessary funds for prevention and extinguishment of forest fires in their towns either by levy or by the supervisor making temporary loans.

7. Advance by comptroller. The comptroller may upon request of the conservation commission advance, not to exceed five thousand dollars at any time, to said commission for the purpose of facilitating payment of fire accounts. (*Added by L. 1916, ch. 451, in effect May 9, 1916.*)

§ 54. Forest fire prevention.—The following provision * shall apply in protecting forests from fire.

1. Proclamation by governor. Whenever, by reason of drought, the forests of the state are in danger of fires which may be caused by hunters, fishermen, trappers, or campers, the governor shall have the power to determine and shall determine and declare that such pursuits are contrary to the public interest, and shall have the further authority to forbid by proclamation any person or persons carrying on such pursuits in so much of the territory included within the fire towns as he deems the public interest requires. Such proclamations shall be in full force and effect at the expiration of twenty-four hours after notice is given in the manner the governor may determine.

2. Top lopping evergreen trees. Every person who shall within any of the fire towns fell or cause to be felled or permit to be felled any evergreen tree for sale or other purposes shall cut off or cause to be cut off from the said tree at the time of felling the said tree, unless otherwise authorized by the commission before the trees are felled, all the limbs thereof up to a point where the trunk of the said tree has a longest diameter which does not exceed three inches, unless the said tree be felled for sale and use with the limbs thereon or for use with the limbs thereon.

3. Fires generally. No fires shall be set on or near forest land and left unquenched; no fire shall be set which will endanger the property of an-

* So in original.

other; no person shall set forest land on fire; no person shall negligently suffer fire on his own property to extend to property of another; no person shall use combustible gun wads or carry naked torches on forest lands; no fire shall be set in or near forest land in connection with camping without all inflammable material having first been removed for a distance of three feet around the fire; no person shall drop, throw, or otherwise scatter lighted matches, burning cigars, cigarettes or tobacco; no person shall deface or destroy any notice posted containing forest fire warnings, laws, or rules and regulations.

4. Unpiloted hot air balloons. No unpiloted hot air balloon shall be sent up in any fire town or in a town adjacent thereto.

5. Fires to clear land. No person shall set or cause to be set fire for purpose of clearing land or burning logs, brush stumps, or dry grass, in any of the fire towns, without first having obtained from the commission a written permit so to do. If such burning is done near forest lands and if there is danger of the fire spreading, a person designated to issue such permits must be present.

6. Protection on steam plants. No device for generating power which burns wood, coke, lignite or coal shall be operated in, through or near forest land, unless the escape of sparks, cinders or coals shall be prevented in such manner as may be required by the commission.

7. Material adjoining rights of way. In fire towns brush, logs, slash or other inflammable material shall not hereafter be left within twenty-five feet of the right of way of a railroad or within twenty feet of the right of way of a public highway and constitutes a fire hazard, the conservation commission may order the owner to remove the same within twenty days.

8. Deposit of inflammable material. No person shall deposit, and leave in any of the fire towns, brush or inflammable material upon the right of way of highways. (*Added by L. 1916, ch. 451, in effect May 9, 1916.*)

§ 55. Railroads in forest lands.—In order to secure proper protection to the forests from fire the railroads which operate through such territory shall be subject to the following restrictions.

1. Railroad patrol. All railroads shall, on such parts of their rights of ways as are operated through forest lands, maintain from April first to November fifteenth of each year a sufficient number of competent fire patrolmen unless relieved by the commission. The railroad shall file in the office of the commission on or before April first of each year a complete list of such patrol indicating the names of the men, their post-office addresses and portion of right of way assigned each patrolman. If any changes are subsequently made similar data shall be furnished on request of the commission.

2. Clearing rights of way. The right of way of all railroads which are

operated through forest lands shall be kept cleared of all inflammable material whenever required by the commission.

3. Locomotives to be equipped. No locomotive shall be operated unless equipped with fire protective devices of ash pan and front end which have been approved by the commission. Such devices shall be maintained and properly used.

4. Reports of fires. A verified report of every forest fire which originates on the right of way or within two hundred feet thereof, in any of the fire towns or protected forest lands, shall be prepared by the railroad concerned, upon blanks furnished by the commission, and filed in the office of the commission within ten days after such fire occurs.

5. Examination of engine and records. Every railroad company shall examine each coal burning locomotive each day it is operated between March first and December first, and record the condition of the fire protective devices in a book kept for that purpose. Such book shall be kept on file and be accessible to inspectors of the conservation commission.

6. Deposit of coals, et cetera. Fire, live coals or hot ashes shall not be deposited unless properly protected upon any track or right of way on or near forest land.

7. Use of protective devices. Employees of a railroad shall at all times use in a proper and effective manner the fire protective appliances provided by such railroad. (*Added by L. 1916, ch. 451, in effect May 9, 1916.*)

§ 56. Damages on account of forest fires.—In case of damage by forest fire negligently caused the injured party may maintain actions in accordance with such of the following provisions as are applicable thereto and shall have redress therefor.

1. Injury to state lands. Any person who causes a fire which burns on or over state lands shall be liable to the state for treble damages and, in addition, to a penalty of ten dollars for every tree killed by such fire.

2. Injury to municipal or private lands. Any person who causes a fire which burns on or over lands belonging to another person or to a municipality shall be liable to the party injured for actual damages in case of fire negligently caused or for damages at the rate of one dollar for each tree killed or destroyed in case of fire wilfully caused.

3. Recovery for damages from fires. The state, a municipality or any person may sue for and recover under subdivisions one or two of this section, however distant from the place where the fire was set or started and notwithstanding the same may have burned over and across several separate, intervening and distinct tracts, parcels or ownerships of land.

4. Method of computing value of state property. Damages to state lands and timber shall be ascertained and determined at the same rate of value as if such property were privately owned.

5. Prima facie cause on right of way. The fact that a fire originates

upon the right of way of a railroad shall be prima facie evidence that the fire was caused by negligence of the railroad company.

6. Prima facie cause in clearing lands. Whenever a fire has been set for the purpose specified in subdivision five of section fifty-four in any of the fire towns it shall be prima facie evidence that the fire was started by the owner or occupant of the land. (*Added by L. 1916, ch. 451, in effect May 9, 1916.*)

§ 57. Exemption of reforested lands from taxation.—In consideration of the public benefit to be derived from the planting and growing of forest trees, and to the end that the growth of forest trees may be encouraged and the water supply of the state protected and conserved, and that floods may be prevented, the owner of any waste, denuded or wild forest lands, of the area of five acres or upwards, within the state, which are unsuitable for agricultural purposes, who shall agree with the commission to set apart for reforestation or for forest tree culture, the whole, or any specific portion of such waste, denuded or wild forest lands, of the area of five acres or upwards, may apply to the conservation commission, in manner and form to be prescribed by it, to have such lands separately classified as lands suitable for reforestation or underplanting within the purposes and provisions of this section. Each application for such classification shall be accompanied by a plot and description of the land, and shall state the area, character and location thereof, and such other information in reference thereto as the commission may require; such application shall be accompanied by a certificate of the assessors of the tax district or districts in which said lands are located, which shall set forth the assessed valuation of said lands for the last five years preceding the date of such application; or if said lands have not been separately assessed during any part of said period, or the timber has been removed therefrom at any time during said period of five years, by a sworn statement of the assessors of the value of said lands, which lands shall be valued at the same rate as other waste, denuded or wild forest lands in said tax district, similarly situated; such application shall also contain a declaration that the owner intends to reforest or underplant the lands described in such application with such number and kind of trees per acre and in such manner as the commission shall specify, and to comply with all reasonable rules and regulations of the commission in reference to future care and management of said lands and trees.

If it appears from said application and certificate or sworn statement that said lands are suitable for reforestation or underplanting purposes and have not been assessed during the period of five years next preceding the date of such application at an average valuation of more than five dollars per acre, or that similar lands in said vicinity have not been assessed for more than five dollars per acre, the said commission shall, as soon as practicable after the receipt of such application, cause an examination to

be made of the lands for the purpose of determining whether or not it is of a character suitable to be reforested or underplanted and to be classified as such. After such examination if the commission shall determine that such lands are suitable for reforestation or underplanting, it is hereby empowered to enter into a written agreement with the owner, which agreement shall be to the effect that the commission will furnish said owner, at a price not to exceed cost of production, trees to be set out upon said lands, the kind and number to be prescribed by the commission, and to be set forth in said agreement; that the owner will set out upon said land the number and kind of trees per acre designated by the commission; and that said land will not be used for any purpose other than forestry purposes, during the period of exemption, without the consent of the commission; and that said lands and the trees thereon will be managed and protected at all times during the period of said exemption in accordance with the directions and instructions of the commission. Said agreement shall be recorded in the office of the county clerk of the county where the lands are situated, and the provisions thereof shall be deemed to be and be covenants running with the land. Within one year after the making of such agreement, said lands shall be planted by the owner with the number and kind of trees specified therein; and the owner shall file with the commission an affidavit making due proof of such planting, which affidavit shall remain on file in the office of said commission. Upon the filing of such affidavit the commission shall cause an inspection of such lands to be made by a competent forester who shall make and file with said commission a written report of such inspection. If the commission is satisfied from said affidavit and report that the lands have been forested in good faith as provided in said agreement, it shall make and execute a certificate under its seal, and file the same with the county treasurer of the county in which the lands or any part thereof so forested are located, which certificate shall set forth a description of said lands, the area and the owner thereof, the town in which the same are situated, a statement that the land has been separately classified for taxation in accordance with the provisions of this section and a valuation, in excess of which, said lands shall not be assessed for the period of thirty-five years, which valuation shall not in any event be greater than the average valuation at which the same lands were assessed for the last five years preceding the date of said application, or the value of such lands as appears by the aforesaid sworn statements of the assessors of such tax district, and a statement that the trees and timber thereon shall be exempt from taxation during said period. Upon the filing of such certificate it shall be the duty of the county treasurer to file with the assessors of each tax district in which the lands described are located, a certified copy thereof, and the assessors of such tax district shall place the lands according to the description contained in said certificate upon the next assessment-roll, prepared for the assessment of lands within such tax district, at a valuation not to exceed the amount stated

in said certificate, and not to exceed the assessed valuation of similar lands in said tax district; and said assessors shall insert upon the margin of said assessment-roll opposite the description of said lands, a statement that said lands shall not be assessed during the period of thirty-five years at a value in excess of said amount and that the trees and timber growing upon said land shall be wholly exempted from taxation during said period; and said assessors shall also insert upon the margin of said assessment-roll the date of expiration of said exemption. Such lands shall be assessed, and continue to be assessed, and carried in such manner, upon the assessment-rolls, of such towns until the end of the exemption period. In the event that lands so classified shall, in the judgment of the commission, cease to be used exclusively for forestry purposes to the extent provided in the agreement between the conservation commission and the owner, or that said owner has violated its terms, or any reasonable rules and regulations of the commission in respect to the use of or the cutting of timber on said lands, the exemption from taxation provided in this section shall no longer apply; or at the election of the commission such owner may be also restrained from said acts by injunction; and the assessors having jurisdiction shall, upon the direction of the commission, assess said lands against the owner at the value, and in the manner provided by the tax law for general assessment of land.

The planting or underplanting of a tract in forest trees in compliance with the agreement as provided in this section shall be taken and deemed to be an acceptance by the owner of the exemption privileges herein granted and of the conditions herein imposed; and in consideration of the public benefit to be derived from the planting, underplanting, cultivation and growth of such trees the exemption of such trees from taxation and the taxation of the land upon which such trees are grown as herein provided, shall be continued and is hereby assured; and the right to such exemption and taxation shall be inviolable and irrevocable as a contract obligation of the state, so long as the owner of the land so planted shall fully comply with and perform the conditions of such contract not exceeding said period of thirty-five years. (*Added by L. 1916, ch. 451, in effect May 9, 1916.*)

§ 58. Report of forest products.—It shall be the duty of all manufacturers of timber and consumers of round wood or timber or wood for commercial purposes to report to the conservation commission, annually, when called upon to do so, on blanks furnished by the commission, the amount of round wood or timber used or lumber manufactured from trees grown in this state during the calendar year. (*Added by L. 1916, ch. 451, in effect May 9, 1916.*)

§ 59. Appropriation of real property.—The commission shall, with the approval of the governor, have the power and authority to appropriate real property in the manner and under the conditions herein defined:

1. Purposes: (a) The commission may enter upon and take possession of any lands or waters or both, or of any forests and rights in timber upon such lands, or upon any part, or portion thereof, within the Adirondack or Catskill parks or adjacent thereto, the appropriation of which, in the judgment of said commission, shall be necessary for public park purposes, or for the protection and conservation of the lands, forests and waters within the state, and

(b) May enter upon and take possession of any lands or waters or both, within the state that may be necessary, in the judgment of said commission, for the purpose of artificial propagation of food and game fish for restocking the public waters of the state.

2. Description of land. An accurate description of such property so entered upon and appropriated shall be made by the commission, who shall certify under its seal that the description is correct, and shall endorse thereon a notice that the property described therein is appropriated by the people of the state of New York for the purpose described in this section. The original of such description and certificate shall be filed in the office of the secretary of state. The conservation commission may make such additional copies of this certificate and description as may be necessary and certify the same.

3. Service of notice. The said commission shall thereupon cause a duplicate of said description and certificate, with notice of the date of filing thereof in the office of said secretary of state, to be served on the owner or owners of the lands, forests, and rights in timber upon such lands and waters so appropriated; and from the time of such service the entry upon and appropriation by the people of the state of the property described in such notice shall be deemed complete, and thereupon such property shall become, and be, the property of the people of the state. Such notice shall be conclusive evidence of an entry and appropriation by the state; but the service of such notice shall raise no presumption that the lands, forests, and rights in timber upon such lands described therein are private property.

4. Manner of service. Service of the notice and papers provided for under subdivision three must be personal if the person to be served can be found within the state. If the person to be served falls within any of the classes mentioned in section four hundred and thirty-eight of the code of civil procedure, the provisions of article second, title one of chapter five of the code of civil procedure relating to the service of a summons in an action in the supreme court, shall apply, so far as practicable, to the service of such notice and papers.

5. Description and certificates to be recorded. Said commission shall thereupon cause a duplicate of such description, certificate, and notice of filing, with an affidavit of due service thereof on such owner or owners, to be recorded in the books used for recording deeds in the office of the clerk of any county in this state in which any of the property described therein

may be situated; and the record of such notice, and of such proof of service, shall be presumptive evidence of due service thereof.

6. Adjustment of claims by agreement. Claims for the value of the property appropriated, and for legal damages caused by any such appropriation, may be adjusted by the commission, if the amount thereof can be agreed upon with the owner or owners thereof. Upon making any such adjustment and agreement the commission shall deliver to the comptroller a certificate stating the amount due to said owner on account of such appropriation of his land or other property, and the amount so fixed shall be paid by the treasurer upon the warrant of the comptroller.

7. Court of claims, jurisdiction of. If the commission and the owner or owners of the property so appropriated fail to agree upon the value of such property, or upon the amount of legal damages resulting from such appropriation, within one year after the service of the notice and papers provided for in section sixty-eight of this chapter, such owner may, within two years after the service of such notice and papers, present to the court of claims a claim for the value of such land and legal damages; and said court shall have jurisdiction to hear and determine such claim and render judgment thereon. Upon filing in the office of said commission, and in the office of the comptroller, a certified copy of the judgment of the court of claims, and a certificate of the attorney-general that no appeal from such judgment has been, or will be taken, by the state, or if an appeal has been taken, a certified copy of the final judgment of the appellate court affirming in whole or in part the judgment of the court of claims, the comptroller shall issue his warrant for the payment of the amount due the claimant by such judgment, with interest from the date of the judgment until the thirtieth day after the entry of such final judgment, and such amount shall be paid by the treasurer.

8. Court of claims to examine property. The court of claims, if requested by the claimant or the attorney-general, shall examine the real property affected by the claim of damages for the appropriation thereof and take testimony in relation thereto in the county where such property or a part thereof is situated.

9. Owner may reserve timber on land appropriated. 1. The owner of land taken under this article may, with the written consent of the conservation commission, and within the limitations hereinafter prescribed, reserve trees thereon not less than eight inches in diameter, breast high, at the time of the service of the notice provided the removal of such trees will not destroy the forest cover. Such reservation must be exercised within six months after the service upon the owner of a notice of the appropriation, by the owner serving upon such commission a written notice that he elects to reserve such trees. If such notice be not served by the owner within the time above specified he shall be deemed to have waived his right to such reservation, and such trees shall thereupon become and be the

property of the state. The presentation of a claim to the court of claims before the service of a notice of reservation shall be deemed a waiver of the right to such reservation.

10. Reservation on lands purchased. Land acquired by purchase may be taken subject to the reservation of the trees thereon down to eight inches in diameter, breast high, at the time of such purchase, with the right to the owner to remove the same within the time specified in the next section, or upon agreement between the commission and the owner, subject to any lease, mortgage, or other incumbrance, not extending fifteen years beyond the date of acquisition. The amount or value of any such lien, incumbrance or timber reservation, upon land so purchased, shall be deducted from the purchase price thereof.

11. Right to reserve timber restricted. The right to reserve timber, and the manner of exercising and consummating such right, are subject to the following restrictions, limitations and conditions:

(a) Timber within twenty rods of a lake, pond or river cannot be reserved. Under the supervision of the commission roads may be cut or built across or through such excepted space of twenty rods, for the purpose of removing trees from adjoining lands, and the person reserving such timber on the adjoining lands, his legal representatives or assigns, shall have the right, which right shall be deemed a part of such reservation, to construct such roads, through and across the reserved timber land, and through and across such excepted strip, as may be necessary to remove the timber so reserved; but in constructing such roads only such trees shall be cut as are within the limits of such roads. The commission may prescribe the manner of all such roads and may permit the use of any dead, down or other necessary timber for the construction only of roads, skidways, lumber camps, or for fuel, which right shall also be deemed a part of the soft wood timber reservation by the owner. No trees or timber shall be cut for the construction of roads, camps or other purposes, except such as are reserved by the owner, or for which permission to cut has been given as provided in this section.

(b) All timber reserved by the owner must be removed from the land within fifteen years after the service of notice of reservation or the making of the contract of purchase, subject to reasonable regulations to be prescribed by the commission; such land shall not be cut over more than once, and said commission may prescribe reasonable regulations for the purpose of enforcing this limitation. All timber reserved, and not removed from the land within such time, shall thereupon become and be the property of the state, and all title or claim thereto by the original owner, his legal representatives or assigns, shall thereupon be deemed abandoned.

12. Compensation for reserved timber lands. A person who reserves timber as provided in this article shall not be entitled to any compensation for the value of the land purchased or taken and appropriated by the state, or for any damages caused thereby, until

(a) The timber so reserved is all removed and the object of the reservation fully consummated; or

(b) The time limited for the removal of such timber has fully lapsed, or the right to remove any more timber is waived by a written instrument filed with said commission; and

(c) Said commission is satisfied that no trespass on state lands has been committed by such owner, or his assigns, or legal representatives; that no timber or other property of the state, not so reserved, has been taken, removed, destroyed, or injured by him or them, and that a cause of action in behalf of the state does not exist against him or them for any alleged trespass or other injury to the property or interests of the state; and

(d) That the owner, his assignee or other legal representatives, has fully complied with all rules, regulations and requirements of said commission concerning the use of streams, or other property of the state, for the purpose of removing such timber. Provided, however, that said commission may at any time by its certificate filed with the comptroller direct the payment to the owner of such land, his legal representatives or assigns, of the compensation therefor, or a part thereof, at such time and upon such conditions as may be set forth in the certificate.

13. Timber reserved; value of land; how determined. If timber be reserved, its value at the time of making an agreement between the owner and said commission for the value of the land so appropriated, and the legal damages caused thereby, or at the time of the presentation to the court of claims of a claim for such value and damages, shall be taken into consideration in determining the compensation to be awarded to the owner on account of such appropriation either by such agreement or by the judgment rendered upon such a claim.

14. Adjustment of claims for trespass or other injuries. In cases of trespasses or other injuries to lands or property purchased or acquired by the state the commission may settle and adjust any claims for damages due to the state on account of any such trespasses or other injuries to property or interests of the state, or penalties incurred by reason of such trespasses or otherwise, and the amount of such damages or penalties so adjusted shall be deducted from the original compensation agreed to be paid for the land, or for damages, or from a judgment rendered by the court of claims on account of the appropriation of such land. A judgment recovered by the state for such a trespass or for a penalty shall likewise be deducted from the amount of such compensation or judgment.

15. Judgments. When a judgment for damages is rendered for the appropriation of any lands or waters for the purposes specified in this article, and it appears that there is any lien or incumbrance upon the property so appropriated, the amount of such lien shall be stated in the judgment, and the comptroller may deposit the amount awarded to the claimant in any bank in which moneys belonging to the state may be de-

posited, to the account of such judgment, to be paid and distributed to the persons entitled to the same as directed by the judgment.

16. Warrants. A warrant shall not be drawn by the comptroller for the amount of compensation agreed upon between the owner and said commission, nor for the amount of a judgment rendered by the court of claims, until a further certificate by the commission is filed with the comptroller to the effect that the owner has not reserved any timber and that he, his assignee or other representative, has complied with the provisions of this article, or has otherwise become entitled to receive the amount of the purchase price, award or judgment.

17. Interest. If timber is reserved upon land purchased or appropriated as provided by this article, interest is not payable upon the purchase price, or the compensation which may be awarded for the value of such land, or for damages caused by such appropriation, except as provided in subdivision seven of this section.

18. Costs and disbursements; when offer made. If an offer is made by said commission for the value of land appropriated, or for damages caused by such appropriation, and such offer is not accepted, and the recovery in the court of claims exceeds the offer, the claimant is entitled to costs and disbursements as in an action in the supreme court, which shall be allowed and taxed by the court of claims and included in its judgment. If in such a case the recovery in the court of claims does not exceed the offer, costs and disbursements to be taxed shall be awarded in favor of the state against the claimant and deducted from the amount awarded to him; or if no amount is awarded, judgment shall be entered in favor of the state against the claimant for such costs and disbursements. If an offer is not accepted, it cannot be given in evidence on the trial.

19. Removal of timber; use of streams. Persons entitled to cut and remove timber under this article may use streams or other waters of the state within the forest preserve counties for the purpose of removing such timber, under such regulations and conditions as may be prescribed or imposed by the commission. The persons using such waters shall be liable for all damages suffered by the state or any person caused by such use. (*Added by L. 1916, ch. 451, in effect May 9, 1916.*)

§ 60. Communal forests.—A county, city, town, or school district may acquire by purchase, or gift, or take over lands in its possession within the boundaries thereof and use the same for forestry purposes.

1. Power and authority. The governing board of a county, city, town or school district may appropriate money or issue bonds either for purchase of lands for the purposes herein provided, to establish forest plantations or for the care and managements* of forests. Such boards may undertake such work at regular or special meetings by majority vote of such board after two weeks public notice setting forth the fact that such plan

* So in original.

L. 1916, ch. 451.

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is contemplated and that moneys are to be appropriated for such purpose.

2. Assistance and trees. The conservation commission may assist and advise such boards in its reforestation work, and the commission may furnish trees for reforestation such publicly owned lands without charge provided they are planted in accordance with the instructions of the commission.

3. Use. Such governing board shall have full power and authority to acquire, maintain, manage and operate such forests for the benefit of the inhabitants of its district.

4. Revenue. The net income from such lands shall be paid into the general fund of such municipal division and shall be used only upon order of its governing board.

§ 61. Use of forest preserve restricted. In order to protect the lands described in this article the following provisions shall apply.

1. Trees or timber. No person shall cut, remove or destroy any trees or timber or other property thereon or enter upon such lands with intent so to do.

2. Structures. No buildings shall be erected, used or maintained upon the forest preserve except under permits from the commission.

3. Agricultural use. No person shall use any portion of the forest preserve for agricultural purposes, nor shall cattle or domestic animals of any kind be permitted to graze thereon.

4. Deposit rubbish. No person shall deposit or leave thereon any rubbish or other waste material.

5. Transfer or lease. No person shall lease, transfer or accept any lease or transfer of any lands in the forest preserve or of any improvements thereon.

6. Dispose of improvements. The commission may dispose of any improvements upon the forest preserve under such conditions as it deems to be to the public interest.

7. Reforested lands. No person shall injure or cause to be injured any trees planted for the purpose of reforestation.

8. Removal of materials generally. No person shall remove any material belonging to the state from the state lands without the authorization of the commission. (*Added by L. 1916, ch. 451, in effect May 9, 1916.*)

§ 62. Definitions.—The following words and phrases used in this article are defined as follows:

1. Forest preserve. The forest preserve shall include the lands owned or hereafter acquired by the state within the county of Clinton, except the towns of Altona and Dannemora, and the counties of Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Warren, Washington, Greene, Ulster and Sullivan, except

(a) Lands within the limits of any village or city, and

(b) Lands not wild lands acquired by the state on foreclosure of mortgages made to loan commissioners.

2. Adirondack park. All lands located in the forest preserve counties of the Adirondacks within the following described boundaries, to wit: Beginning at the southeast corner of the town of Hope in the county of Hamilton, and running thence westerly along the southerly lines of Hamilton county, and continuing and following the southerly line of the town of Wilmurt, in Herkimer county to the point of intersection with the westerly line of Herkimer county, and thence northerly along the westerly lines of Herkimer county to its junction with the southwesterly line of Saint Lawrence county; thence westerly along said southwesterly line of Saint Lawrence county to the most westerly corner of township fourteen, great tract three, Macomb's purchase; thence easterly along the northerly line of said township fourteen to the northeast corner thereof; thence northerly along the west line of township thirteen, great tract three, Macomb's purchase, to the northwest corner of said township thirteen; thence east along the north line of said township thirteen and the south line of township ten, tract and purchase aforesaid, to the southwest corner of the southeast quarter of said township ten; thence north along the west line of the said southeast quarter of the aforesaid township ten and the west line of the northeast quarter thereof to the north line of said township; thence east along said north line to the west line of township seven, great tract two, Macomb's purchase; thence northerly along the west line of township seven aforesaid to the northwest corner of the township; thence easterly along the northerly lines of townships seven and eight, great tract two, Macomb's purchase, to the southwest corner of township twelve of said great tract two; thence northerly along the west line of township twelve to the northwest corner of lot one in the south half of said township; thence easterly along the north line of said south half of said township twelve to the west line of the county of Franklin; thence north along the west line of the county of Franklin to the northwest corner of the south half of township thirteen of great tract one, Macomb's purchase, thence easterly along the northerly line of the south half of townships thirteen, fourteen and fifteen of said great tract one, Macomb's purchase, to the west line of the old military tract; thence south along said west line to the northwest corner of township ten of said old military tract; thence easterly along the north line of said township ten to the west line of Clinton county; thence southerly along the west line of Clinton county to the north line of Essex county; thence easterly along the north line of Essex county to the northeast corner of the town of Wilmington; thence along the east and easterly line of the town of Wilmington to the intersection with the north line of the town of Keene; thence east to the northeast corner of said town of Keene; thence southerly along the easterly line of the town of Keene to the southeast corner thereof; thence easterly along the northerly line of the town of North Hudson to the most northeasterly corner of the said town; thence southerly along the easterly lines of the towns of North Hudson and Schroon to the southeast corner of the said town of Schroon;

thence westerly along the southerly line of the towns of Schroom and Minerva to the northeasterly corner of Leggett's survey of the southwest quarter of township fourteen of Totten and Crossfield's purchase; thence southeasterly along the line of Leggett's survey to the southerly line of said township fourteen; thence southwesterly along the line of Leggett's survey, being the southerly line of said township fourteen, to the most southerly corner of said township; thence southeasterly along the easterly line of township thirteen and the westerly line of township twelve, to the southeasterly corner of lot twenty-five of township eleven of said Totten and Crossfield's purchase; thence southwesterly along the southerly line of lots twenty-five, twenty-six, twenty-seven and twenty-eight to the southwesterly corner of said lot twenty-eight; thence southeasterly along the easterly lines of lots forty-four, fifty-three, sixty-eight, seventy-seven and five of said township eleven, and of lots nine, twenty-one, thirty, thirty-seven and forty of the gore between township eleven of Totten and Crossfield's purchase and the Dartmouth patent and of lot five of ranges six, seven, eight, nine and ten of the Dartmouth patent, great tract, to the southeasterly corner of lot five of said range six of said patent in Warren county; thence westerly along the southerly line of said range six of said Dartmouth patent to the northeasterly line of Palmer's purchase; thence southeasterly along the easterly line of said Palmer's purchase to the most easterly corner of the middle division of said purchase; thence southwesterly along the southerly line of the said middle division of Palmer's purchase through Saratoga county to the easterly boundary of the town of Hope in Hamilton county; thence southerly along the east line of the town of Hope to the place of beginning, shall constitute and be known as the Adirondack park. All lands within said park now owned, or which may hereafter be acquired by the state, shall be forever reserved and maintained for the use of all the people.

3. Catskill park. All lands located in the counties of Greene, Delaware, Ulster and Sullivan within the following described boundaries, to wit: Beginning in Ulster county at the southeasterly corner of great lot five of the Hardenburgh patent; thence running northwesterly along the southerly boundary of said great lot five through Sullivan county to the east branch of the Delaware river in Delaware county; thence along the southerly bank of said east branch of the Delaware river to the Ulster and Delaware railroad at the village of Arkville; thence along the said Ulster and Delaware railroad easterly to the line between the counties of Delaware and Ulster; thence northeasterly along that line to the southerly line of Greene county; thence northwesterly along the southerly line of Greene county to the line between the towns of Halcott and Lexington; thence northerly along the easterly line of the town of Halcott to the line between great lots twenty and twenty-one of the Hardenburgh patent; thence northerly along said line to the south bank of the Bataviakill; thence along the southerly bank of the Bataviakill easterly to the west line of the

state land tract; thence northerly, easterly and southerly along the line of the said state land tract to the line between the towns of Cairo and Catskill; thence southwesterly along said town line to the easterly line of the town of Hunter; thence southerly along the said easterly line of the town of Hunter to the line of the Hardenburgh patent; thence easterly, southerly and westerly along the general easterly line of the Hardenburgh patent to the line between the towns of Olive and Rochester of Ulster county; thence easterly on said line to the point where the Mettacahonts creek crosses the same flowing easterly; thence southwesterly parallel with the northwesterly line of the town of Rochester to the line between the towns of Rochester and Wawarsing; thence westerly and southerly along the line of the Hardenburgh patent to the place of beginning, shall constitute and be known as the Catskill park. All lands within such park, now owned, or which may hereafter be acquired by the state, shall be forever reserved and maintained for the free use of all the people.

4. Saint Lawrence reservation. All that part of the river Saint Lawrence lying and being within the state, with the islands therein, and all that portion of Lake Ontario adjacent to Jefferson county, including Chaumont bay, Guffins bay, Black river bay and Henderson bay, with the islands therein, and such lands along the shore thereof as are now owned by, or shall hereafter be acquired by the state, is continued as an international park which shall be known as the "Saint Lawrence reservation."

5. John Brown farm. All that certain tract of land in the Adirondack park, known as the "John Brown farm," in the town of North Elba, in the county of Essex and state of New York, being the greater part of lot number ninety-five, Thorn's survey, of township number twelve, Old Military Tract, now owned by the state pursuant to a deed of gift made and executed the twenty-ninth day of March, eighteen hundred and ninety-five, by Henry Clews and Lucy Madison Clews, his wife, to the people of the state of New York, shall be and continue to be dedicated and used for the purposes of a public park or reservation forever.

6. Cuba reservation shall include all the lands owned by the state surrounding Cuba lake in the counties of Allegany and Cattaraugus.

7. Person includes a copartnership, joint-stock company or a corporation.

8. Forest land includes not only lands which may be covered with tree growth but also lands which are best adapted to forests.

9. Forest fire is a fire which is not only burning forest or woodlands, but which, if permitted to extend, would burn forest or upon forest lands.

10. Fire towns are as follows: All towns in Hamilton county; the towns of Altona, Ausable, Black Brook, Dannemora, Ellenburg and Saranac, Clinton county; the towns of Andes, Colchester, Hancock and Middletown, Delaware county; the towns of Chesterfield, Elizabethtown, Jay, Keene, Lewis, Minerva, Moriah, Newcomb, North Elba, North Hudson, Saint Armand, Schroon and Wilmington, Essex county; the towns of

Altamont, Belmont, Brighton, Duane, Franklin, Harriettstown, Santa Clara and Waverly, Franklin county; the towns of Bleecker, Caroga, Mayfield and Stratford, Fulton county; the towns of Hunter, Jewett, Lexington and Windham, Greene county; the towns of Ohio, Russia, Salisbury, Webb and Wilmurt, Herkimer county; the towns of Croghan, Diana, Greig, Lyonsdale and Watson, Lewis county; the towns of Forestport and Remsen, Oneida county; the towns of Corinth, Day, Edinburg and Hadley, Saratoga county; the towns of Clare, Clifton, Colton, Fine, Hopkinton, Parishville, Piercefield, Pitcairn, Saint Lawrence county; the towns of Neversink, Rockland, Sullivan county; the towns of Denning, Gardiner, Hardenburgh, Olive, Rochester, Shandaken, Shawangunk, Wawarsing and Woodstock, Ulster county; the towns of Bolton, Caldwell, Chester, Hague, Horicon, Johnsburch, Luzerne, Queensbury, Stony Creek, Thurman and Warrensburgh, Warren county; the towns of Dresden, Fort Ann and Putnam, Washington county.

11. Right of way is the land adjacent to the tracks of a railroad and shall be construed to be fifty feet in width on each side of the center of the track but if the company own a lesser width it shall include the entire width owned by them.

12. A fire patrolman shall be an able bodied man whose duty is to patrol a given portion of right of way for the purpose of detecting promptly any fires which may be caused by the operation of the railroad, or other fires which may occur upon such portion of the right of way, and secure their extinguishment.

13. Railroad or railroad company includes all common carriers, logging or lumbering roads for public or private uses wherever the motive power is generated by steam. (*Added by L. 1916, ch. 451, in effect May 9, 1916.*)

§ 63. Penalties.—In order to secure the enforcement of the several sections of this article the following fines and penalties are provided.

1. Any person who violates any provision of this article or who fails to perform any duty imposed by any provision thereof shall be guilty of a misdemeanor, and shall be liable or punishable by a fine of not less than ten nor more than one hundred dollars, or by imprisonment of not less than ten nor more than one hundred days, or by both such fine and imprisonment.

2. The violation of any of the following provisions shall subject the person guilty thereof to the following penalties in addition to those provided in subdivision one of this section; section fifty-four, subdivision two, penalty of two dollars per tree; for failure to comply with the provisions of subdivision six of section fifty-four, penalty of twenty-five dollars per day; for violation of the several subdivisions of section fifty-five as follows: subdivisions one and two, ten dollars per mile per day; subdivision three, one hundred dollars per day per locomotive; subdivision five, penalty of twenty-five dollars per day per place and penalty of one hundred dollars

for failure to show record of inspector; for violation of subdivision six, one hundred dollars for each offense.

3. Any person who molests, injures, removes, destroys or withholds supplies or other material maintained for forest fire protection purposes shall be guilty of a misdemeanor.

4. Any person who sets fire wilfully in violation of section fifty-four, subdivision three shall be guilty of a felony.

5. Any person who cuts or causes to be cut any tree or trees upon the forest preserve shall be liable to a penalty of ten dollars per tree or treble damages or both.

6. In default of the payment of any fine or penalty imposed under this section, the defendant may be committed to jail until such fine or penalty is paid, but the term of confinement shall not exceed one day for each dollar of fine imposed. (*Added by L. 1916, ch 451, in effect May 9, 1916.*)

§ 64. **Saving clause.**—The repeal of any laws, or parts thereof, set forth in the annexed schedule of laws repealed shall not affect or impair any act done, offense committed or right accruing, accrued or *required, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected. (*Added by L. 1916, ch. 451, in effect May 9, 1916.*)

§ 65. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed. (*Added by L. 1916, ch. 451, in effect May 9, 1916.*)

§ 66. **When to take effect.**—This act shall take effect immediately. (*Added by L. 1916, ch. 451, in effect May 9, 1916.*)

SCHEDULE OF LAWS REPEALED.

Laws of	Chapter.	Section.
1913.....	527.....	All.
1913.....	719.....	All.
1913.....	723.....	All.
1913.....	759.....	All.
1914.....	139.....	All.
1915.....	30.....	All.
1915.....	318.....	§ 11

Note.—L. 1912, ch. 444, was not included in the foregoing schedule of laws repealed. Section 5 of such act repealed former article 5 and inserted a new article. The foregoing article was substituted for such article as inserted by chap. 444 of L. 1912. It follows that all of article 5, including §§ 90-112, was repealed by L. 1916, ch. 451.

§ 90. **Limits to be cut off.**—*Added by L. 1912, ch. 444, amended by*

* So in original.

L. 1916, ch. 155.

Fish and game closes.

§ 153.

L. 1913, ch. 723, and repealed by L. 1916, ch. 451, § 65, in effect May 9, 1916.

§ 94. Expenses of fighting fires; how paid.—*Added by L. 1912, ch. 444, amended by L. 1913, ch. 723 and repealed by L. 1916, ch. 451, § 65, in effect May 9, 1916.*

§ 98. Setting fires without permission; penalties; damages.—*Added by L. 1912, ch. 444, amended by L. 1913, ch. 723, and repealed by L. 1916, ch. 451, § 65, in effect May 9, 1916.*

§ 99a. Unpiloted hot-air balloons not to be operated in certain counties.—*Added by L. 1915, ch. 30, and repealed by L. 1916, ch. 451, § 65, in effect May 9, 1916.*

§ 103. Clearing right of way.—*Added by L. 1912, ch. 444, amended by L. 1913, ch. 723, and repealed by L. 1916, ch. 451, § 65, in effect May 9, 1916.*

§ 107. Proclamation by Governor in times of draught.—*Added by L. 1912, ch. 444, amended by L. 1914, ch. 139, and repealed by L. 1916, ch. 451, § 65, in effect May 9, 1916.*

§ 152. Additional or other protection.—*Subd. 5, amended by L. 1913, ch. 508, and repealed by L. 1916, ch. 521, § 37, in effect May 12, 1916.*

§ 153. Fish and game closes.—The commission may, on the request of a majority of the town board of any town or a majority of the common council of any city, by order, prohibit or regulate the taking of birds or game on lands set aside, with the consent of the owner or owners thereof, as bird and game refuges for a period of not to exceed ten years. On a like request, when fish have been or shall be placed in waters of a town or of a city at the expense of the state, the commission may by order prohibit or regulate the taking of fish from such waters, for a period of not to exceed three years. At least thirty days before such order shall take effect, a copy of the same certified by the secretary to the commission shall be filed in the office of the clerk of the town or city in which the prohibition or regulation applies. Printed notices at least one foot square that such lands or streams have been closed, shall be posted along the boundaries of the land or along the shores or banks of the waters affected not more than fifty rods apart measured along the said boundaries and along said banks.

Any person who shall violate or attempt to violate any such order shall be guilty of a misdemeanor, and shall, upon conviction, be subject to a fine of not to exceed one hundred dollars, or shall be imprisoned for not more than thirty days, or both, for each offense and in addition shall be liable to the penalties hereinafter provided for taking fish, birds or quadrupeds in the close season.

An affidavit of the fact of such stocking with fish or of posting such

§§ 154, 159-161, 168.

Publication of laws, etc.

L. 1916, ch. 521.

notices or a certification of such facts by a game protector when filed in the office of the commission shall be presumptive evidence of the facts stated therein and a copy of either when certified by the secretary to the commission shall be competent evidence in any action or proceeding for enforcement of any of the provisions of this section. (*Added by L. 1912, ch. 318, and amended by L. 1913, ch. 508, and L. 1916, ch. 155, in effect Apr. 7, 1916.*)

§ 154. Power of commission to dispose of seizures.—Whenever any fish, birds, wild animals or parts thereof, or any devices used in taking the same illegally, are found in the possession or under the control of a person contrary to law, said fish, birds, wild animals, or parts thereof, together with the device or devices used in taking the same, shall be seized and confiscated in the name of the state. The commission may dispose of such fish, birds or wild animals or devices in such manner as it deems proper. (*Added by L. 1912, ch. 318, and amended by L. 1916, ch. 521, in effect May 12, 1916.*)

§ 159. License to collect or possess for propagation, scientific or exhibition purposes.

An internal revenue tax under the Act of 1914, need not be paid on a bond required by this section. Atty. Gen'l. Opin., 5 State Dep. Rep. 528 (1915).

§ 160. Publication of laws relating to fish and game.—As soon as practicable after the adjournment of the legislature in each year, the commission shall make a compilation of the laws relating to fish and game as amended at the date of such compilation, and properly index the same. Copies of said compilation sufficient in number for the purposes of this section shall be printed in pamphlet form of pocket size, under the direction of the clerks of the senate and assembly, and such clerks shall distribute them as follows: one hundred copies to each senator; fifty copies to each assemblyman. Twenty thousand copies to the commission for general distribution. It shall be the duty of the commission to prepare and issue a syllabus of the said laws and to deliver to county, city and town clerks a supply sufficient for furnishing one copy to each person procuring a hunting or trapping license, and each such person shall be entitled to one copy of said syllabus. (*Added by L. 1912, ch. 318, and amended by L. 1913, ch. 508, and L. 1916, ch. 521, in effect May 12, 1916.*)

§ 161. Observance of rules and regulations; penalty.—*Added by L. 1912, ch. 318, and repealed by L. 1916, ch. 521, § 38, in effect May 12, 1916.*

§ 168. Compensation of game protectors.—The chief game protector shall receive an annual salary of four thousand dollars. The deputy chief game protector shall receive an annual salary of twenty-four hundred dollars. Each division chief protector shall receive an annual salary of sixteen hundred dollars and his actual and necessary traveling expenses, not exceeding seven hundred and fifty dollars a year. Each fisheries pro-

tector shall receive an annual salary of thirteen hundred dollars, and his actual and necessary traveling expenses, not exceeding seven hundred and fifty dollars. Each game protector shall receive an annual salary of nine hundred dollars and his actual and necessary traveling expenses, not exceeding six hundred dollars; provided, however, that each game protector who shall have been rated in the first grade for a full year shall receive increased salary at the rate of fifty dollars per annum, and for each year thereafter in which he shall so qualify he shall receive a like increase until he receives the sum of thirteen hundred dollars per annum, but the commission shall have the power in its discretion, for cause shown, to cancel such increase or any part thereof on the failure of any protector receiving such increase to qualify for the first grade in any year. Game protectors rated in the first grade only shall be eligible for promotion. (*Added by L. 1912, ch. 318, and amended by L. 1915, ch. 318 and L. 1916, ch. 521, in effect May 12, 1916.*)

§ 169. Powers of game protectors.—Game protectors, forest rangers, and fisheries protectors shall enforce all laws relating to fish, birds and quadrupeds; all laws of boards of supervisors relating to the same; and shall have power to execute all warrants and search warrants issued for a violation of this article; to serve subpoenas issued for the examination and investigation or trial of offenses against any of the provisions of said law; to make search where they have cause to believe that fish, birds or quadrupeds, or any parts thereof, are possessed in violation of law, and without search warrant to examine the contents of any boat, car, automobile or other vehicle, box, locker, basket, creel, crate, game bag or other package, and the contents of any building other than a dwelling house, to ascertain whether any of the provisions of this article or of any law for the protection of fish, shell-fish, birds or quadrupeds have been or are being violated, and to use such force as may be necessary for the purpose of such examination and inspection; and with a search warrant to search and examine the contents of any building or dwelling house; seize all quadrupeds, birds or fish, or any parts thereof possessed in violation of the law, or showing evidence of illegal taking, and seize and confiscate all devices used in taking fish, game or wild animals illegally, and hold the same subject to the order of the commission; to arrest without warrant any person committing a misdemeanor under the provisions of this article in their presence, and take such person immediately before a magistrate having jurisdiction for trial, and to exercise such other powers of peace officers, in the enforcement of the provisions of this chapter, or of judgments obtained for violation thereof, as are not herein specifically provided. Any regular or special game protector, fisheries protector, fire superintendent, forest ranger or inspector who shall compromise or settle any violation of the fish and game law out of court or except as provided by section thirty-six of this chapter, without the order of the commission shall be guilty of a misdemeanor.

§§ 176, 178.

Transportation of game.

L. 1916, ch. 521.

(Added by L. 1912, ch. 318, and amended by L. 1916, ch. 521, in effect May 12, 1916.)

PART III, ARTICLE V

Title amended to read as follows by L. 1916, ch. 521, in effect May 12, 1916:

OWNERSHIP; MANNER OF TAKING; LIMIT; POSSESSION; SALE AND TRANSPORTATION OF WILD GAME AND FISH RESTRICTED; PENALTIES.

§ 176. Taking, sale, transportation &c. of fish and game restricted.—

Application.—This section, as amended by chap. 508 of the Laws of 1913, only applies to birds, animals and transportation within the state of New York. *People v. Bisbee* (1915), 90 Misc. 601, 153 N. Y. Supp. 993.

An information charging defendant with "hunting rabbits with a ferret" with the particular date and place added, contrary to and in violation of said section, was good, as, though the offense alleged to have been committed was not specified and in terms mentioned in said section, it was prohibited by section 196 of said statute which was included in article V thereof. The information was not defective because of the omission to allege that the hunting did not occur in one of the counties excepted from the operation of the statute, nor because of the absence of an allegation that defendant was not the owner or occupant of the farm or lands upon which the crime is alleged to have been committed, and did not have authority in writing from the owner to hunt with a ferret. *People v. Chamberlain* (1915), 92 Misc. 720, 157 N. Y. Supp. 535.

Validity of commitment.—Where the record of conviction shows that defendant was convicted of a violation of this section, which might mean any one of a large number of acts, an objection that the commitment was void in that it did not designate the offense or the time and place of its commission is not available to defendant on appeal from the judgment of conviction. *People v. Chamberlain* (1915), 92 Misc. 720, 157 N. Y. Supp. 535.

A sentence upon conviction of a fine of eighty-five dollars, defendant to stand committed until the same was paid, not exceeding eighty-five days, held not illegal. *People v. Chamberlain* (1915), 92 Misc. 720, 157 N. Y. Supp. 535.

§ 178. Transportation.—*Subd. 4, amended by L. 1916, ch. 521, in effect May 12, 1916, as follows:*

4. Importation of fish and game not lawfully salable. The taker may transport from a point without to a point within the state, during the open season therefor within the state of New York, game or fish of species which may not be lawfully sold, provided such game or fish was lawfully taken and may be lawfully brought from the place where taken; and further provided that the taker accompanies the same; or, the same may be shipped by him by common carrier except parcel post, but in that case the shipping requirements of subdivision three of this section shall apply.

The taker may transport from a point without to a point within the state, during the closed season therefor within the state of New York, game or fish of species which may not be lawfully sold, or for which there is no open season, provided such game or fish was lawfully taken and may be lawfully brought from the place where taken, and further provided

that the taker accompanies the same and shall have with him a license issued by the commission permitting such transportation. Quadrupeds may be shipped by the taker by common carrier, except by parcel post, but in that case the shipping requirements of subdivision three of this section shall apply. Such game or fish when so transported may be possessed at any time.

Importation of birds.—Subdivision four permits birds to be imported and brought into the state under certain conditions, but contains no prohibition and prescribes no penalty for importing or bringing them in otherwise than in the manner prescribed by that section. Said statute is penal and where partridges imported into this state without a shipping permit or importation clause issued by the New York state conservation commission arrived in this state during the season when it was lawful for partridges to be taken in this state and there used by persons lawfully taking the same, the importer is not subject to a penalty under section 182 of the statute for a violation of section 178(4). *People v. Bisbee* (1915), 90 Misc. 601, 153 N. Y. Supp. 993.

§ 182. Penalties.—1. Unless a different or other penalty or punishment is herein specially prescribed, a person who buys, sells, offers for sale, takes, possesses, transports or has in possession for sale or transportation any fish, bird or quadruped, shell-fish or crustacean in violation of any of the provisions of the conservation law in relation to fish and game, or who violates or who fails to perform any duty imposed by any of the provisions of said law, or any lawful order, rule or regulation adopted by the commission, is guilty of a misdemeanor; and in addition thereto is liable as follows: to a penalty of sixty dollars and an additional penalty of twenty-five dollars for each fish, bird, quadruped, shell-fish or crustacean, or part of fish, bird, quadruped, shell-fish or crustacean bought, sold, offered for sale, taken, possessed, transported or had in possession for sale or transportation in violation thereof.

2. A person who buys, sells, offers for sale, takes, possesses, transports or has in possession for sale or transportation any deer, elk, moose, caribou, antelope, beaver or part of any such animal in violation of any of the provisions of said law or of any lawful rule or regulation of the commission, is guilty of a misdemeanor, and in addition thereto is liable as follows: to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each deer, elk, moose, caribou, antelope, beaver or part of any such animal bought, sold, offered for sale, taken, possessed, transported or had in possession for sale or transported contrary to law.

3. A person who violates any of the provisions of sections two hundred and forty-five, two hundred and forty-seven or two hundred and forty-eight thereof, shall be guilty of a misdemeanor, and in addition thereto is liable as follows: to a penalty of five hundred dollars, and an additional penalty of ten dollars for each fish taken, killed or possessed in violation thereof.

4. Any public officer who fails to perform any duty imposed by any of

the provisions of said law or of any lawful rule or regulation of the commission is guilty of a misdemeanor, unless otherwise specifically prescribed herein, and in addition thereto is liable to a penalty of one hundred dollars.

5. A person who violates any provision of part eleven shall be guilty of a misdemeanor, and shall be liable to exemplary damages in the sum of twenty-five dollars for each offense or trespass to be recovered by the owner of the lands, or hunting or fishing rights thereon, with costs of suit, in addition to the actual damages, all of which may be recovered in the same action. The consent in writing of such owner to hunt or fish on said lands during the open season shall be a defense to a prosecution under this section.

3. Fees. Said applicant, if a resident of the state for over six months and a citizen, shall pay to the clerk countersigning and issuing the license the sum of one dollar as a license fee, together with the sum of ten cents as the fee of the county, city or town clerk for issuing such license, and if a nonresident of the state, or an unnaturalized person or an alien, resident or nonresident, shall pay to the clerk countersigning and issuing license the sum of ten dollars together with the sum of fifty cents as a fee to the clerk.

§ 185. Hunting and trapping licenses.—*Subd. 3, as amended by L. 1913, ch. 508, amended by L. 1916, ch. 521, in effect May 12, 1916, as follows:*

Subd. 4, amended by L. 1916, ch. 297, in effect Apr. 25, 1916, as follows:

Subd. 4. Disposition of fees. The license fees above provided for shall be remitted by the city and town clerks on the first Tuesday of each month to the county clerk of the county, with duplicate schedules setting forth the name and residence of each licensee and the serial number of and the amount paid for each license issued. Such license fees, less three per centum thereof which the county clerk is hereby authorized to retain for his compensation, and the license fees received by the county clerk for issuing licenses from his office, less three per centum thereof for such compensation, shall belong to the state and shall be remitted to the commission on the second Tuesday of each month with a duplicate of said schedule, and the fees so received by the commission shall be remitted by the commission to the state treasurer as are fines and penalties.

Subd. 6, as amended by L. 1913, ch. 508, amended by L. 1916, ch. 521, in effect May 12, 1916, as follows:

6. Carrying and exhibiting same. No person to whom a license has been issued shall be entitled to take wild animals, fowl or birds, or trap fur bearing animals in this state unless at the time of such taking he shall have such license on his person, and shall exhibit the same for inspection to any protector or other officer or other person requesting to see the same. Such licensee shall also wear in a conspicuous place on his clothing a button to be furnished by the commission through the clerks

L. 1916, ch. 521.

Hunting and trapping licenses.

§§ 186, 188.

issuing licenses. Buttons shall be uniform in size and at least two inches in diameter and shall bear a number corresponding to the number of the license delivered to the applicant and such other matter as may be determined by the commission. The failure of the licensee at all times while hunting, trapping or taking wild animals, fowl or birds, to wear such button in a conspicuous place on his clothing shall cause a forfeiture of his license. Such person shall surrender upon demand his license and button to any game protector or other person duly authorized by the commission to receive the same. No other or additional penalty than the forfeiture of his hunting or trapping license, as herein provided, shall be suffered by a licensee failing to wear such button. But such forfeiture shall not operate to prevent a person from procuring another license as provided in this section. The provisions of this section with respect to the issuance of and the wearing of a button shall take effect January first, nineteen hundred and seventeen.

§ 186. **Penalties.**—*Added by L. 1912, ch. 318, amended and renumbered by L. 1913, ch. 508, and repealed by L. 1916, ch. 521, § 38 (under nom. 187), in effect May 12, 1916.*

§ 188. **Nonresident fishing license.**—Except as hereinafter provided, no person, except a bona fide resident of this state for at least thirty days immediately prior to such taking, shall take any fish by angling in any of the fresh waters under the jurisdiction of the state of New York forming a part of the state boundary or through which the state boundary runs or shall engage in fishing in such waters without first having procured a license so to do. Said license shall be procured in the manner provided in section one hundred and eighty-five hereof. The applicant shall pay to the clerk the sum of two dollars as a license fee therefor, together with the sum of fifty cents as a fee to the clerk; provided, however, that a non-resident person under the age of sixteen years, or a woman, may take fish, by angling, without obtaining a fishing license. The provisions of section one hundred and eighty-five in so far as the same are applicable to licenses shall apply to all licenses issued under this section. If a resident of this state may lawfully fish in such part of said boundary waters as are not within the jurisdiction of the state of New York without being required to obtain a fishing license from the state or country having jurisdiction over the said waters, then a resident of such state or country may take fish in such part of said boundary waters as are within the jurisdiction of the state of New York without obtaining the nonresident fishing license provided for herein. (*Added by L. 1915, ch. 223, and amended by L. 1916, ch. 522, in effect May 12, 1916.*)

§ 190. **Wild deer.**—*Subd. 1, amended by L. 1916, ch. 521, in effect May 12, 1916, as follows:*

§§ 191, 193.

Possession of deer; dogs.

L. 1916, ch. 521.

1. Open season. Only wild deer having horns not less than three inches in length may be taken from October first to November fifteenth, both inclusive, and in wholly inclosed deer parks and in the counties of Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Oneida, Oswego, Saratoga, Saint Lawrence, Warren and Washington.

Subd. 3 amended by L. 1916, ch. 521, in effect May 12, 1915, as follows:

3. Manner of taking. Wild deer may be taken only on land. No jacklight or other artificial light, trap or saltlick, or other device to entrap or entice deer, shall be used, made or set, nor shall any deer be taken by aid or use thereof. Deer shall not be hunted, pursued or killed by any dog of either sex.

§ 191. Possession of wild deer or venison.—Wild deer or venison lawfully taken may be possessed from October first to November twentieth, both inclusive. A person may possess such deer or venison from November twenty-first to February first, both inclusive, provided a license so to do shall first be obtained from the commission. Every person obtaining such license shall pay to the commission a fee of one dollar. Deer or venison so possessed shall at all times be marked or tagged in such manner as the commission may provide. If possession of deer is obtained for transportation after October first and before midnight of November sixteenth, it may lawfully remain in the possession of a common carrier the additional time necessary to deliver the same to its destination. Possession of deer or venison, or any part thereof, from November sixteenth to February first, both inclusive, shall be presumptive evidence that the same was unlawfully taken. (*Added by L. 1912, ch. 318, and amended by L. 1913, ch. 508, L. 1914, ch. 92, and L. 1916, ch. 521, in effect May 12, 1916.*)

§ 193. Dogs to be killed.—*Added by L. 1912, ch. 318, amended by L. 1915, ch. 176, and repealed by L. 1916, ch. 521, § 38, in effect May 12, 1916.*

§ 193. Dogs to be licensed.—No dog of either sex shall be taken into the Adirondack or the Catskill Park, or into forests inhabited by deer, or harbored or possessed therein, unless the owner shall first obtain a license for such dog from the commission, and pay a fee of one dollar therefor. The license shall be issued by the commission in its discretion and under such rules and regulations as it may deem advisable and shall terminate with the calendar year in which issued. A metal tag marked with a number corresponding to the number of the license shall be issued with the said license, and shall be attached to a collar and shall be at all times worn by the dog so licensed.

Dogs of either sex, licensed as herein provided, shall not run at large in the Adirondack or the Catskill Park or forests inhabited by deer, unaccompanied by the owner.

Any act committed or done contrary to the provisions of this section, or

L. 1916, ch. 521.

Moose; hares; beaver, etc.

§§ 194, 196-198.

the neglect to perform any duty provided therein, shall be deemed a violation thereof for which the owner shall be liable.

Any person may and it shall be the duty of every game protector to kill any dog of either sex pursuing or killing deer, and no action for damages shall be maintained against the person for such killing. The prohibitions of this section shall not apply to dogs upon lands actually farmed or cultivated by the owner of such dog, or within the limits of an incorporated village or town, or a community having a resident population of not less than one hundred individuals. (*Added by L. 1912, ch. 318, and amended by L. 1915, ch. 176, and L. 1916, ch. 521, in effect May 12, 1916.*)

§ 194. Wild moose; elk; caribou and antelope.—There shall be no open season for wild moose, elk, caribou and antelope; but they may be brought into the state for breeding purposes. The flesh or any portion of any such animal may be possessed or transported by the owner thereof, provided such animal was killed by the owner thereof, in a private park within the state, and further provided that the provisions of section three hundred and seventy-two in so far as the same are applicable are in all respects complied with. (*Added by L. 1912, ch. 318, and amended by L. 1916, ch. 521, in effect May 12, 1916.*)

§ 196. Hares and rabbits; open season; limit; sale; breeding.—*Title thus amended by L. 1916, ch. 521, in effect May 12, 1916.*

Subd. 4 added by L. 1916, ch. 521, in effect May 12, 1916, as follows:

4. Breeding. Varying hares and cotton-tail rabbits when bred in captivity may be bought and sold for food purposes during the close season therefor, provided a license so to do shall have first been obtained from the commission, upon the payment to it of a license fee of five dollars a year. Varying hares and cotton-tail rabbits so bred may be bought and sold for food purposes during the close season, provided the same shall first have been tagged with an indestructible tag or seal which shall be supplied by the commission under such rules and regulations as it deems advisable.

§ 197. Beaver; closed season.—No person shall take or possess beaver at any time or molest or disturb any wild beaver or the dams, houses, homes or abiding places of same, except as permitted in section one hundred and fifty-eight. (*Added by L. 1912, ch. 318, and amended by L. 1916, ch. 521, in effect May 12, 1916.*)

§ 198. Mink; raccoon and sable; open season.—Mink, raccoon and sable may be taken either in the daytime or at night and in any manner and possessed from November tenth to March fifteenth, both inclusive. (*Added by L. 1912, ch. 318, and amended by L. 1913, ch. 508, and L. 1916, ch. 521, in effect May 12, 1916.*)

§ 201. Muskrat; open season.—Muskrat, may be taken in any manner,

§§ 211, 214-216.

Water fowl; game birds.

L. 1916, ch. 521.

except as herein prohibited, day or night, and possessed from November tenth to April twentieth, both inclusive. Muskrat houses shall not be molested, injured or disturbed at any time. The taking of muskrats by shooting is prohibited. (*Added by L. 1912, ch. 318, and amended by L. 1913, chs. 147, 508, L. 1914, ch. 92, and L. 1916, ch. 521, in effect May 12, 1916.*)

§ 203. **Penalties.**—*Added by L. 1912, ch. 318, amended by L. 1913, ch. 508, and repealed by L. 1916, ch. 521, in effect May 12, 1916.*

§ 211. **Anatidae or water fowl.**—*Subd. 3, amended by L. 1916, ch. 521, in effect May 12, 1916, as follows:*

3. Manner of taking. Water fowl may be taken during the open season from the land, from a blind or floating device used to conceal the hunter (other than a sail or power boat) from a rowboat, when the same is within fifty feet of the shore or a natural growth of flags or in pursuit of wounded birds. Flocks of ducks shall not be pursued in fresh water so as to drive them away from any neighborhood.

§ 214. **Gallinae or upland game birds; open season; limit.**—Upland game birds may be taken as follows, and when so taken may be possessed during the open season therefor and for an additional period of the five days next succeeding the said open season:

1. Quail. There shall be no open season for quail before October first, nineteen hundred and eighteen.

2. Grouse or partridge. October first to November thirtieth, both inclusive. A person may take not to exceed four grouse or partridge in one day and twenty in the open season.

3. Wild pheasants. On the last two Thursdays in the month of October and the first two Thursdays in the month of November and possessed during the period of time between the first open Thursday in October and the last open Thursday in November, inclusive. Only wild male pheasants may be taken. A person may take and possess not to exceed three wild male pheasants in the open season.

4. Partridge. There shall be no open season for Hungarian or European gray legged partridge. (*Added by L. 1912, ch. 318, and amended by L. 1913, ch. 508, L. 1914, ch. 92, and L. 1916, ch. 521, in effect May 12, 1916.*)

§ 215. **Upland game birds; open season; limit; special.**—Quail, pheasants, and grouse may be taken on Long Island from November first to December thirty-first, both inclusive. A person may take not to exceed ten quail, six male pheasants and four grouse in any one day and fifty quail, thirty-six male pheasants and twenty grouse, in the open season on Long Island. (*Added by L. 1912, ch. 318, and amended by L. 1913, ch. 508, and L. 1916, ch. 521, in effect May 12, 1916.*)

§ 216. **Limicolae or shore birds; open season; limit.**—Shore birds may

L. 1916, ch. 521.

Protection of wild birds.

§§ 217, 219, 222.

be taken as follows, and when so taken may be possessed during the open season therefor and for an additional period of the five days next succeeding the said open season:

1. Woodcock. October first to November fifteenth, both inclusive. A person may take not to exceed four woodcock in one day and twenty in the open season.

2. Snipe, plover, surfbirds, sandpipers, tatlers and curlews. September sixteenth to November thirtieth, both inclusive. A person may take not to exceed fifteen shore birds in the aggregate of all kinds in one day. Whenever two or more persons are occupying the same boat or blind not to exceed twenty-five shore birds may be taken in the aggregate of all kinds in one day by such persons. (*Added by L. 1912, ch. 318, and amended by L. 1913, ch. 508, and L. 1916, ch. 521, in effect May 12, 1916.*)

§ 217. **Shore birds; open season; special.**—Shore birds may be taken on Long Island as follows:

1. Woodcock. October fifteenth to November thirtieth, both inclusive.

2. Snipe, plover, surfbirds, sandpipers, tatlers and curlews. August first to November thirtieth, both inclusive. (*Added by L. 1912, ch. 318, and amended by L. 1916, ch. 521, in effect May 12, 1916.*)

§ 219. **Certain wild birds protected.**—Wild birds other than the English sparrow, starling, crow, hawk, crow-blackbird, snow-owl, great horned owl, great blue heron, bittern and kingfisher shall not be taken or possessed at any time, dead or alive, except under the authority of a certificate issued under this article. No part of the plumage, skin or body of any bird protected by this section or of any birds coming from without the state, whether belonging to the same or a different species from that native to the state of New York, provided such birds belong to the same family as those protected by this article, shall be sold or had in possession for sale. The provision of this section shall not apply to game birds for which an open season is provided in this article, birds or parts thereof collected or possessed in accordance with the provisions of section one hundred and fifty-nine. (*Added by L. 1912, ch. 318, and amended by L. 1916, ch. 77, and L. 1916, ch. 521, in effect May 12, 1916.*)

§ 222. **Game shall not be taken on certain public lands.**—Game shall not be taken on the lands purchased or condemned by any municipality within the state for the purpose of supplying any municipality with water and protecting the same from pollution and contamination, or on any public highway, except public highways other than state or county highways within the forest preserve counties. (*Added by L. 1912, ch. 318, and amended by L. 1916, ch. 405, in effect May 3, 1916.*)

The taking of game upon highways within the forest preserve, is not prohibited by this section. Atty. Genl. Opin. 5 State Dep. Rep. 498 (1915).

§§ 236, 278.

Fish; protection.

L. 1916, ch. 521.

§ 222-a. **Game not to be taken from an automobile.**—No person while in an automobile shall take game; nor by aid or use of any light or lights carried thereon or attached thereto. (*Added by L. 1916, ch. 404, in effect May 3, 1916.*)

§ 223. **Penalties.**—*Added by L. 1912, ch. 318, amended by L. 1913, ch. 508, and repealed by L. 1916, ch. 521, § 38, in effect May 12, 1916.*

§ 236. **Pike perch; open season; size limit; sale of.**

1. Open season, size limit and sale of. Pike perch not less than twelve inches in length may be taken, possessed, bought and sold in any number or quantity from May thirtieth to March first, both inclusive.

2. Blue pike perch and saugers of any size may be taken at any time and in any number or quantity in Lakes Erie and Ontario and in the lower Niagara river, and when so taken may be possessed, bought and sold. (*Added by L. 1912, ch. 318, and amended by L. 1916, ch. 403, in effect May 3, 1916.*)

§ 236-a. **Yellow perch; open season; sale of.**

1. Yellow perch may be taken and possessed, in any number or quantity, from the waters of Cazenovia lake, Otisco lake, Skaneateles lake, Cross lake, Onondaga lake and Jamesville reservoir, only between the first day of May and the first day of March, both inclusive. (*Added by L. 1915, ch. 219, and amended by L. 1916, ch. 521, in effect May 12, 1916.*)

§ 258. **Penalties.**—*Added by L. 1912, ch. 318, amended by L. 1913, ch. 508, and repealed by L. 1916, ch. 521, in effect May 12, 1916.*

§ 278. **Nets in Chaumont bay and adjacent waters.**—Fish, except black bass and muskalonge, may be taken with nets during the open season therefor in the waters and bays of Lake Ontario, in the county of Jefferson, between Horse island, in the town of Hounsfield, and the town line between the towns of Lyme and Cape Vincent, except the waters within one-half mile of Stoney island, Calf island or of the Galloup islands from October first to June first, both inclusive, and except the waters around Fox island within three-quarters of a mile of said island between a line running due north from the foot of said island, and a line running due east from the south head of said island from October tenth to November twentieth, both inclusive. Such nets shall on order of the commission be removed from any place after the black bass begin to run there. Sturgeon may be taken with sturgeon nets of not less than five-inch bar at any time. (*Added by L. 1912, ch. 318, and amended by L. 1913, ch. 664, and L. 1916, ch. 521, in effect May 12, 1916.*)

§ 284. **Penalties.**—*Added by L. 1912, ch. 318, amended by L. 1913, ch. 508, and repealed by L. 1916, ch. 521, in effect May 12, 1916.*

§ 323. **Residents only to take lobsters, except in certain waters.**—No per-

L. 1916, ch. 523.

Game farm at Sherburne.

§§ 324, 366a.

son who has not been an actual resident of this state for six months immediately prior to the time of engaging in the taking of lobsters, shall take lobsters from the public waters of the state, except that in the public waters of the state lying to the west of a line drawn from Rocky Point to Race Rock and thence extended in the same direction until it intersects with the state boundary line between New York and Connecticut, licenses to take lobsters may be issued to nonresidents upon payment of the following fees: For boats of ten or more tons measurement, thirty-five dollars; for boats of five to ten tons measurement, twenty-five dollars; for all other boats, twenty dollars, except that for boats carrying one man only the license fee shall be fifteen dollars. Such boats, when so licensed, shall carry displayed upon them the license number, of such size and placed in such position upon the boat or rigging as may be prescribed by the commission. Such licenses shall not be transferable and shall be conditioned that the holder shall observe the fishery laws of this state, and shall at any time and without delay permit protectors and peace officers of this state to board such boats and inspect the cargo or contents. All such licenses shall expire upon the thirty-first day of December following the date of issue, and any license may be revoked at any time at the pleasure of the commission. (*Added by L. 1912, ch. 318, and amended by L. 1916, ch. 170, in effect Apr. 7, 1916.*)

§ 324. Licenses for vessels; non-residents; unlawful use of food fish.—*Subd. 3 amended by L. 1916, ch. 521, in effect May, 1916, as follows:*

3. Unlawful use of food fish. It shall be unlawful for any person to render food fish into oil or fertilizer, and any person taking or using food fish for such purpose shall be guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars for each offense.

§ 355. Penalties.—*Added by L. 1912, ch. 318, amended by L. 1913, ch. 508, and L. 1914, ch. 92, and repealed by L. 1916, ch. 521, § 38, in effect May 12, 1916.*

§ 365. Private parks; fish and game protected.

The taking of game upon highways within the limits of private parks is prohibited by this section. *Atty. Genl. Opin. 5 State Dep. Rep. 498 (1915).*

§ 366-a. Game farm at Sherburne.—The conservation commission is also authorized to set aside the following tract of land as a game refuge surrounding the game farm at Sherburne, Chenango county, New York, bounded and described as follows: Commencing at a point in the village of Sherburne at the intersection of Main and State streets, and running thence northerly in the highway leading from Sherburne village to Earlville village and crossing the Lackawanna railroad track at Baldwin station; thence westerly from said Baldwin station about eighty-eight rods to a bridge across the east branch of the Chenango river where the said Sherburne-Earlville highway is intersected by the Earlville and Sherburne

west-hill highway; and thence southerly on the Sherburne west-hill highway two miles to Sherburne west-hill, and crossing at Sherburne west-hill the highway leading from Sherburne village to Smyrna village; and running thence south from Sherburne west-hill along the Merrill's ridge road to Sherburne four corners; being two miles and three hundred and sixteen rods; and running thence northeasterly from Sherburne four corners past the school house on the road leading from Sherburne four corners to Sherburne village; and thence easterly across the Chenango river and along the Pratt road, being about three miles and one hundred and sixty rods, to the place of beginning. (*Added by L. 1916, ch. 523, in effect May 12, 1916.*)

§ 367. **Penalties.**—*Added by L. 1912, ch. 318, as § 366, amended by L. 1913, ch. 508, renumbered by L. 1914, ch. 92, and repealed by L. 1916, ch. 521, § 38, in effect May 12, 1916.*

§ 371. **Sale of trout raised in private hatcheries.**—Any person desiring to engage in the business of propagating and selling trout raised in a private hatchery may make application in writing to the commission for a permit so to do. The commission, when it appears that such application is made in good faith, shall issue to such applicant a hatchery permit to propagate, raise and sell trout during the entire calendar year, provided, however, that before any trout shall be transported, sold or offered for sale, the same shall be duly tagged under regulations prescribed by the commission. Upon obtaining a like permit, trout raised in a private hatchery without the state may be possessed and sold within the state, provided the same shall be tagged as prescribed under rules and regulations of the commission. (*Added by L. 1912, ch. 318, and amended by L. 1915, ch. 298, and L. 1916, ch. 521, in effect May 12, 1916.*)

§ 372. **Licenses, &c.**—*Subd. 6, amended by L. 1916, ch. 521, in effect May 12, 1916, as follows:*

6. **Reports.** On or before the fifteenth day of April of each year every person, to whom a license shall have been issued as aforesaid, shall make a report to the commission covering the calendar year ending the thirty-first day of December in which said license was issued, which said report shall state the total number of elk, deer, pheasants, mallard and black ducks killed, sold or transported, as permitted by the provisions of this section, during the said period.

Such reports shall set forth the name of the person to whom such elk, deer, pheasants or ducks were sold or transported; the name of the game protector or person designated in whose presence such elk, deer, pheasants or ducks were tagged, and such reports shall be verified by the affidavit of the person to whom such license was issued, or if the license was issued to a corporation, then by an officer thereof.

§ 373. **Certain mammals and birds may be imported from without the**

L. 1916, ch. 406.

Certain birds may be imported.

§§ 374, 377.

United States and sold.—The unplucked carcasses of pheasants of all species, Scotch grouse, European black-game, European black plover, European gray-legged partridge, European red-legged partridge, Egyptian quail, and the carcasses of European red deer, fallow deer, roebuck and reindeer may be imported into this state from without the United States and sold therein at any time, provided, nevertheless, that immediately upon their importation and before they shall have been sold by the importer, there shall be affixed to each bird and to each quarter and each loin of each deer a tag or seal in the manner provided by section three hundred and seventy-two. The said tags or seals shall remain, as aforesaid, until the quarters and loin of such deer, and each bird to which it shall be affixed shall have been consumed, and the sale of any quarter, loin or larger portion of such deer, or of any portion of such bird which shall not at the time have affixed to it the tag or seal aforesaid shall constitute a violation of this section. Provided, nevertheless, that the keeper of a hotel, a restaurant, a boarding house or a retail dealer in meat or a club may sell portions of a quarter or loin of any such deer so tagged, or portions of any bird so tagged to a guest, customer or member for consumption. No dealer other than the keeper of a hotel, a restaurant, a boarding house or a retail dealer in meat or a club shall sell or offer for sale any such game imported and tagged as aforesaid without first obtaining a license so to do from the commission upon such terms and conditions as the commission may prescribe. Such license shall expire on the last day of December in each year at midnight unless sooner revoked by the commission. (*Added by L. 1912, ch. 318, and amended by L. 1913, ch. 508, and L. 1916, ch. 521, in effect May 12, 1916.*)

§ 374. Fees. The commission shall be entitled to receive and collect for each tag or seal affixed to the carcass of any animal or bird, as provided by sections three hundred and seventy-two and three hundred and seventy-three, the sum of five cents; and the sum of one cent for each tag or seal affixed to each trout as provided by section three hundred and seventy-one hereof. (*Added by L. 1912, ch. 318, and amended by L. 1916, ch. 521, in effect May 12, 1916.*)

§ 376. Penalties.—*Added by L. 1912, ch. 318, amended by L. 1913, ch. 508, and repealed by L. 1916, ch. 521, in effect May 12, 1916.*

§ 377. Certain mammals and birds may be imported from without the state and sold.—Any person engaged in the business of raising and selling domesticated American elk, whitetail deer, European red deer and fallow deer, roebuck, pheasants, mallard ducks and black ducks, or any of them, in a wholly enclosed preserve or entire island, of which he is the owner or lessee, under a breeder's law providing for the tagging of all preserve bred game and otherwise similar in principle to the law of the state of New York in such case made and provided, may make application in writ-

§§ 380, 382, 431.

River regulating districts.

L. 1916, ch. 584.

ing to the commission for a permit to import such mammals or birds into the state of New York and sell the same. In the event that the commission shall be satisfied that the said mammals and birds are bred in captivity and are killed and tagged under a breeding law similar in principle to that of the state of New York, upon the payment of a fee of five dollars, together with such additional sum as the commissioner may determine to cover the necessary cost of inspection, the commission may in its discretion issue a revocable permit in writing to such applicant to import such mammals and birds raised as aforesaid into the state of New York and to sell the same, in which case the provisions of sections three hundred and seventy-two, three hundred and seventy-three and three hundred and seventy-four of the conservation law, in so far as the same are applicable, shall apply. (*Added by L. 1916, ch. 406, in effect May 3, 1916.*)

§ 380. Definitions.—*Subds. 28, 29 added by L. 1916, ch. 521, in effect May 12, 1916, as follows:*

28. "Immediate family" as used in subdivision eight of section one hundred and eighty-five of this chapter includes all persons who are related by blood, marriage or adoption and domiciled in the house of the owner or lessee.

29. For the purposes of this chapter a dog shall be deemed to be "at large" when it is outside of the owner's residence or a fenced enclosure immediately surrounding or adjacent to such residence.

§ 382. Construction.—This article is intended to be a restatement of existing law with such changes as clearly appear. The term of office of the present employees of the commission in the division of fish and game shall not be affected, except as herein specifically provided. Nothing in this article shall be construed as amending or repealing any of the provisions of the code of criminal procedure nor of the penal law. Any of the provisions of this article inconsistent with the provisions of the code of criminal procedure or of the penal law shall be held to be effective for the purposes of this article only. (*Added by L. 1912, ch. 318, and amended by L. 1913, ch. 508, and L. 1916, ch. 521, in effect May 12, 1916.*)

§ 431. River regulating districts to be public corporations.—Bodies corporate, which shall consist of and be known as river regulating districts, may be created as in this article provided, to construct, maintain and operate reservoirs within such districts for the purpose of regulating the flow of streams. Such river regulating districts are declared to be public corporations and shall have perpetual existence and all the powers of public corporations, including power to acquire and hold such real estate and other property as may be necessary, to sue and be sued, to incur debts, liabilities and obligations, to exercise the right of eminent domain and of assessment and taxation, to issue bonds and other evidences of indebtedness

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River regulating districts.

§ 446.

and to do all acts and exercise all powers authorized by and subject to the provisions of this article.

Any watershed of the state or any integral part of any such watershed may be created into a river regulating district pursuant to the provisions of this article. (*Added by L. 1915, ch. 662, and amended by L. 1916, ch. 584, in effect May 18, 1916.*)

§ 446. **Acquisition of real estate.**—Said board on behalf of such district shall, subject to the limitations herein contained, have the right to condemn for the use of the district any real estate which, in its judgment, shall be necessary for the purpose of carrying out any of the provisions of this article. It may acquire title to such real estate by agreement with the owner thereof upon the amount of compensation to be paid such owner.

Lands of the state outside of the forest preserve, not used by canals of the state, may be used for the purposes of this article. Not exceeding three per centum of the lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, may be used for the construction and maintenance of reservoirs for the purposes of this article.

If any real estate belonging to any county, city, town, village or school district is required for the purposes of this article, the board of supervisors for such county, the mayor and common council for such city, the town board for such town, the village board for such village, the trustees of any school district for such district, or any persons, body or bodies, having a like power, acting for such public corporation may grant or surrender such real estate for such compensation as may be agreed upon by such official representatives and the board. The compensation agreed upon as thus provided shall be paid to the fiscal officer of the public corporation or the person or persons from whom such real estate is acquired.

Title to any such real estate owned by any infant or incompetent person may be acquired on behalf of the board in the same manner as provided by law with respect to the sale, mortgage or lease of real property of such infant or incompetent person upon such terms as the supreme court or the county court of the county in which such real estate is situated may provide, and for such purpose jurisdiction is hereby conferred upon said courts.

If the board cannot agree with the owners upon the compensation and damages to be paid for the real estate so taken, it shall thereupon serve upon such owners a notice that the real estate described therein has been appropriated by the board for the purposes of this article, and shall proceed to acquire title thereto under the provisions of title one, chapter twenty-three of the code of civil procedure, known as the condemnation law.

Title to all real estate acquired pursuant to the provisions of this article excepting as in this article otherwise expressly provided, shall be taken in

the name of the state of New York, and when so taken shall be deemed to be taken for a public use.

All real estate acquired or taken pursuant to the provisions of this article is hereby dedicated to the use and purposes for which it is so taken, and the right, title and interest acquired by the state therein is so acquired subject to such use and purposes. (*Added by L. 1915, ch. 662, and amended by L. 1916, ch. 584, in effect May 18, 1916.*)

§ 460. Operation and maintenance charges.—The board shall make an estimate of an amount sufficient to pay the expense of the maintenance and operation of the works erected hereunder. If lands in the forest preserve have been used, such estimate shall include in addition a reasonable return to the state upon the value of the rights and property of the state used and the services of the state rendered. Any amount so estimated shall be the estimated amount required for such purposes each year, and when fixed and determined as herein provided shall be the amount thereof for a period of ten years. Said amount shall be readjustable at the end of any ten year term. The board shall certify its determination in this regard to the commission, and upon the approval thereof by the latter, such amount less any part thereof to be paid by the state shall be the amount to be annually collected for such purposes, shall be apportioned upon the public corporations and real estate benefited according to the benefits derived therefrom respectively, and be levied, assessed and collected in the same manner as the cost and expenses of the reservoir are herein provided to be levied, assessed and collected. Such estimates and determinations as from time to time fixed and determined by the board and approved by the commission may upon application of any party affected thereby be reviewed by writ of certiorari by the supreme court of the judicial district in which the reservoir is located. Upon the hearing of any such writ the court shall take the testimony and other proofs of the parties and may make an order affirming, vacating or modifying any such estimate and determination. (*Added by L. 1915, ch. 662, and amended by L. 1916, ch. 584, in effect May 18, 1916.*)

§ 464. Bonds.—The board may from time to time issue bonds to pay the cost of improvements made by it under this article. No issue of bonds shall exceed the aggregate assessment upon public corporations and real estate benefited made for the improvement on which such issue of bonds is made. Such bonds shall show upon their face that the payment thereof is secured by an assessment for an improvement as provided in this article and the proceeds of the assessment for the improvement for which such bonds are issued together with all revenues derived from any leases of water or water power made as herein provided are pledged for the payment of such bonds. Such bonds shall not be construed in any event as bonds or indebtedness of the state, and the state shall not be obligated to pay the principal or interest therefor. They shall bear interest

L. 1916, ch. 295.

State reservation at Saratoga.

§ 600.

not exceeding five per centum per annum payable semi-annually. Such bonds shall be issued in amounts to be fixed as herein provided. They shall become due and payable in not exceeding fifty years from the date of issue, and shall be exempt from taxation. Before issue such bonds must be approved as to amount, term and form by the commission, and each bond shall be countersigned by the comptroller. They shall be signed by the president of the board, attested by its secretary, and have the seal of the regulating district affixed thereto. They shall be sold at not less than par and accrued interest. The comptroller is hereby charged with the duty of selling such bonds to the highest bidder after advertisement for a period of twenty consecutive days, Sunday excepted, in at least two daily newspapers printed in the city of New York, one in the city of Albany and two within the district. Advertisements shall contain a provision to the effect that the comptroller in his discretion may reject any or all bids made in pursuance of such advertisement and in the event of such rejection the comptroller is authorized to readvertise for bids in the form and manner above described as many times as in his judgment may be necessary to effect a sale. Said bonds shall be lawful investments for trustees and savings banks of the state and for any of the funds of the state which by law may be invested. (*Added by L. 1915, ch. 662, and amended by L. 1916, ch. 584, in effect May 18, 1916.*)

Article 10, §§ 550-552.—Renumbered Article 11, §§ 700-702, by L. 1916, ch. 295, § 2, in effect Apr. 26, 1916.

ARTICLE X

(Article added by L. 1916, ch. 295, in effect Apr. 25, 1916.)

THE STATE RESERVATION AT SARATOGA SPRINGS.

- Section 600.** Lands and rights to be acquired.
- 601. Payment for lands or rights taken.
 - 602. Purpose of the reservation.
 - 603. Duties of the commission.
 - 604. Protection of the waters of the reservation.

§ 600. Lands and rights to be acquired.—It shall be the duty of the commission and it shall have power, from time to time, but subject to the conditions and restrictions hereinafter contained, to select and locate such lands in the town of Saratoga Springs in the county of Saratoga, or in any adjoining town, and any rights, easements or interests upon or in any lands in said town or towns, as it shall deem proper and necessary to be taken for the purpose of establishing a state of reservation and preserving the natural mineral springs in said town of Saratoga Springs and adjoining towns and restoring said springs to their former natural condition, and for that purpose to acquire any rights, easements or interests in any property the whole of which it shall not acquire, for the purpose of protecting the springs or mineral water rights upon any lands it shall

acquire, provided, however that said commission shall not at any time acquire lands, easements or interests just compensation required to be made for which shall exceed the amount of all unexpended appropriations properly applicable thereto. Said commission shall from time to time cause maps of such lands which, or rights or easements in which, it shall determine to take, which maps shall be certified by the commission and filed in the office of the secretary of state and in the Saratoga county clerk's office, and shall specify with respect to each piece of such land, whether the whole title thereof is to be taken, and if the whole is not to be taken, the rights, easements or interests therein that are to be taken. The commission may accept from the owner or owners of any such lands, rights, easements or interest a proper conveyance thereof to the state, at any time, and may agree with the grantor or grantors upon a fair value of and the price to be paid for the lands, rights, easements or interests conveyed. From the time of the filing of any such map, or the delivery of such conveyance where no map has been filed, the title of the lands or rights or easements or interests therein specified shall become and be the property of the state of New York, and shall constitute a portion of the reservation herein provided for; and the state may also acquire for the same purpose any lands or other property by gift, grant, assignment, devise or bequest; and no part of the property acquired for such purpose shall be sold or aliened without the consent of the legislature except by concession granted and limited as hereinafter provided. (*Added by L. 1916, ch. 295, in effect Apr. 25, 1916.*)

§ 601. Payment for lands or rights taken.—The commission shall have the power at any time after the filing of any such map to fix and determine with each and any of the respective owners of any lands, rights, easements or interests specified on such map thus filed, upon a fair value of such lands, rights, easements or interests and may agree upon the price to be paid therefor by the state and accepted by said owners respectively, and the amount thus agreed upon shall be audited by the comptroller and shall be paid therefor by the state treasurer upon the certificate of the commission and upon the written approval of the governor out of any funds appropriated for that purpose. In case the commission shall not agree with any owner or owners of said lands, rights, easements or interest within sixty days from the filing of such maps specifying such property, then such owner or owners may recover judgment for the value thereof, in the court of claims, as a claim against the state. (*Added by L. 1916, ch. 295, in effect Apr. 25, 1916.*)

§ 602. Purpose of the reservation.—The reservation property, with all the lands, springs, wells, rights and easements included therein shall forever remain and be kept, maintained and used for the purpose of restoring to their natural state and purity and preserving the said springs and wells and natural flow of water and gases therefrom; and of pro-

moting the resort to the said springs of the people of the state for health, and the other suitable uses of the said reservation by the people, and of identifying, safeguarding and assuring the natural purity, qualities and repute of such water and gases, and for the purpose of providing said waters to the people for drinking, free of charge. (*Added by L. 1916, ch. 295, in effect Apr. 25, 1916.*)

§ 603. **Duties of the commission.**—The commission shall have the care, custody and control of said reservation and of all the mineral springs, wells, mineral waters and natural carbonic acid gas therefrom, therein or thereunder, and of all the rights, easements and interests acquired by it. The commission shall make reasonable provision for the free drinking of said waters at points as near as shall be convenient to the respective sites of the springs producing said waters; it may prescribe and publish and enforce all proper regulations for the maintenance, care and protection of said property, and for the distribution and proper use of said springs, wells, waters and gases, and for other maintenance, care and protection of said reservation. The commission may for proper rentals or other payment and upon other proper terms and subject to the approval of the governor of the state of New York, grant leases or concessions for the use of any portion of the said lands, waters or gases, but every such lease, concession or use shall by its terms be subject to reasonable provision for the free drinking of such water and shall provide that the use by the lessee, concessionee or concessionees of any property or rights included in the said reservation shall be at all times subject to the reasonable regulations of the commission, and that all users of waters, gases, lands or interests by the lessee, concessionee or concessionees shall be subject at any time to the free inspection of the commission and its representatives. The commission may prescribe the terms upon which any excess of mineral water and gas not used on said reservation, or used under such concessions, shall be sold or distributed, and shall prescribe the names, labels and advertisements to be affixed to the bottles or other vessels containing such water or gases, or to be published. And the said commission may itself sell or dispose of any such gases or water. The violation of any reasonable regulation of the commission shall be a misdemeanor and shall be punishable as such. The commission may in the name and behalf of the state bring any proper suit or action in equity, or at law, whether within or without the state to protect and enforce the repute of the said springs or wells, or the waters or gases thereof, or to prevent any corruption, pollution, impairment, diversion or depletion thereof, or interference therewith, or to prevent the unauthorized or unfair use of the name or certificate of the state or any such publication or use of any label or advertisement with reference to said waters or gases or any other waters or gases as are distributed or sought to be sold or distributed as such. The commission may employ such experts, curators, attorneys,

counsel and employees and do such things as shall be found necessary from time to time to maintain, administer, restore, preserve and protect the said reservation and any and all of its lands, easements and interests. The commission shall annually make a report to the legislature setting forth the general situation and state of the said reservation, the proceedings of the commission and its receipts and expenditures. All sums received by the commission shall be paid into the state treasury and all the expenses of the commission shall be paid upon the warrant of the comptroller; it shall report in writing each year to the legislature specifying in detail its receipts and expenditures for such year. (*Added by L. 1916, ch. 295, in effect Apr. 25, 1916.*)

§ 604. Protection of the waters of the reservation.—The commission and its successors are hereby constituted a body corporate under the name of the State Reservation at Saratoga Springs, for the following purposes:

1. To adopt, compose, invent or devise any and every mark, name or device which they may see fit to use in connection with the sale and use of any of the mineral waters of said reservation and to register and file descriptions thereof as trade marks, or trade names, or otherwise, for the protection thereof, or to secure the exclusive right to the use thereof under any laws or statutes of the state of New York or the United States of America, or any other state or country where the sale of such waters may be carried on; and in said corporate name to institute and prosecute any and all suits, actions and other proceedings to restrain or recover damages or penalties for the unauthorized use thereof by any other person or corporation.

2. To institute in the said corporate name and prosecute any and all suits, actions and other proceedings under the laws of the state of New York, or the laws of the United States of America, against any persons or corporations for the violation of any such law for the regulation of the sale of mineral water, or for the prevention of the adulteration thereof and to sue for and recover any penalty which may be imposed for the violation of any such law, for the recovery of which the attorney-general of the state of New York shall not bring action within thirty days after a written statement of the fact of such violation has been presented to him by the commission.

3. To have, possess, use, exercise and enjoy any and all other powers conferred upon corporations in this state by the general corporation law which are not inconsistent with the provisions of this article. (*Added by L. 1916, ch. 295, in effect Apr. 26, 1916.*)

L. 1916, ch. 295 § 2. Article ten of such chapter is hereby renumbered article eleven, and sections five hundred and fifty, five hundred and fifty-one and five hundred and fifty-two renumbered, respectively, sections seven hundred, seven hundred and one and seven hundred and two.

§ 3. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

L. 1916, ch. 50.

Costs to plaintiff.

Code Civ. Pro. § 3228.

§ 4. When to take effect. This act shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

Laws of	Chapter	Section
1909.....	569.....	1, 2, 3, 4 and 5.
1911.....	394.....	1, 2, 3, and 5.
1914.....	252.....	1.

CORONERS.

L. 1916, ch. 110.—An act to abolish the office of coroner in the county of Jefferson, and to provide that the powers and duties of coroners in such county shall hereafter be exercised by the district attorney.

COSTS

Code of Civil Procedure.

§ 3228. Costs to plaintiff.—*Subd. 5 amended by L. 1916, ch. 60, in effect Sept. 1, 1916, as follows:*

5. In all actions hereafter brought in the supreme court, triable in the county of New York, which could have been brought, except for the amount claimed therein, in the city court of the city of New York, and in which the defendant shall have been served with process within the county of New York, the plaintiff shall recover no costs or disbursements unless he shall recover one thousand dollars or more. In all actions hereafter brought in the supreme court, triable in the county of Kings, which could have been brought, except for the amount claimed therein, in the county court of Kings county, and in which the defendant shall have been served with process within the county of Kings, the plaintiff shall recover no costs or disbursements unless he shall recover five hundred dollars or more. In all actions hereafter originally brought in the supreme court, triable in the county of Albany, and in which the defendant is a resident of the county of Albany, which could have been brought, except for the amount claimed therein, in the county court of the county of Albany, the plaintiff shall recover no costs or disbursements unless he shall recover five hundred dollars or more. In all actions hereafter originally brought in the supreme court, triable in the county of Rensselaer, and in which the defendant is a resident of the county of Rensselaer, which could have been brought, except for the amount claimed therein, in the county court of the county of Rensselaer, the plaintiff shall recover no costs or disbursements unless he shall recover five hundred dollars or more. In all actions hereafter brought in the supreme court, triable in the counties of Bronx and Queens, and in which the defendant is a resident of the county where the action is brought, which could have been brought, except for the amount claimed therein, in the county court of the counties of Bronx and Queens, the plaintiff shall recover no costs or disbursements unless he shall recover

Code Crim. Pro. § 39.

Jurisdiction of county court.

L. 1916, ch. 51.

five hundred dollars or more. In all actions hereafter brought, triable in the supreme court or county court of a county contained wholly within a city of the first class, or in the city court of the city of New York, which could have been brought, except for the amount claimed therein, in the municipal court of the city of New York, and in which the defendant shall have been served with process within the city of New York, the plaintiff shall recover no costs or disbursements unless he shall recover two hundred and fifty dollars or more. The fact that in any action a plaintiff is not entitled to costs under the provisions of this subdivision shall not entitle the defendant to costs under the next following section.

COUNTY COURTS.

Code of Criminal Procedure.

§ 39. *Subd. 2, amended by L. 1916, ch. 51, in effect Sept. 1, 1916, as follows:*

2. To try and determine indictments found therein or sent thereto by the supreme court or by a city court in the county for crimes not punishable with death; and the county courts of Albany, Rensselaer, Ulster, Kings, Queens, Bronx and Richmond counties shall also have jurisdiction to try and determine all such indictments, including those for crimes punishable with death.

Amendment includes Rensselaer County.

COUNTY LAW.

(L. 1909, ch. 16.)

§ 4. Actions and contracts in corporate name.

Action by contractor; refusal of sewer commission to audit bill.—Where a county sewer commission refuses to audit the bills of a contractor having sole authority to do so, the county is bound by their action, and the contractor is under no obligation to compel the audit by mandamus, but may bring an action at law under his contract. *American Pipe and Construction Co. v. Westchester County.* (1915) 225 Fed. 947.

§ 12. General powers of board of supervisors.—*Subds. 32 and 33 as added by L. 1915, ch. 679, amended by L. 1916, ch. 5, in effect Feb. 17, 1916, as follows:*

32. The board of supervisors of any county containing a population of less than two hundred thousand and adjoining a city of the first class may authorize the establishment of a plan for the grades of streets, avenues and boulevards; the alteration of such plan of grades, or of any plan thereof, which shall have been established by law; the laying out, opening, grading, construction, closing and change of line, or of the width of any one or more of such streets, avenues and boulevards or any other streets, avenues and boulevards, within said county, or any part or parts thereof, and of the courtyards, sidewalks and roadways; to provide for the estimation and award of the damages to be sustained, and for the assessment on property intended to be benefited thereby, and fixing assessment districts therefor, the levying, collection and payment of such damages, and of all other charges and expenses to be incurred, or which may be necessary in carrying out the provisions of this subdivision; the laying out of new or additional streets, avenues or boulevards according to a general scheme or plan for the improvement of highways in said town, the acceptance by town officers of conveyances of land for public highways, naming and changing of names of streets and avenues within the said county, the opening, laying out, grading, construction, closing and change of line of any street, avenue or boulevard within the county, provided, however, that nothing shall be done hereunder in respect to or concerning any street, avenue or boulevard situated within an incorporated village, without the consent of the board of trustees of such incorporated village. The provisions, however, for the defraying of the expenses thereof by assessment as herein provided, shall only be exercised on the petition of the property owners who own more than one-half of the frontage on any such street, avenue or boulevard, or on the certificate of the supervisor, justices of the peace, and town clerk of the town in which said street, avenue or boulevard is located, or two-thirds of such officers, that the same is in their judgment

proper and necessary for the public interest; or in case the said street, avenue, or boulevard, in respect to which such action is proposed to be taken, shall lie in two or more towns, on a like certificate of such town officers of each of said towns, or two-thirds of all of them; provided, however, that before proceeding to make any such certificate, the said officers, or such number of them as aforesaid, shall give ten days' notice by publication in one of the weekly papers of said county and by posting in six public places in said town, or in each of said towns, of the time and place at which they will meet for the purpose of considering the same, at which meeting the public and all persons interested may appear and be heard in relation thereto; and provided that no such street or avenue shall be laid out, opened or constructed upon or across any lands heretofore acquired by the right of eminent domain, and held in fee for depot purposes by any railroad. (*Added by L. 1915, ch. 679, and amended by L. 1916, ch. 5, in effect Feb. 17, 1916.*)

33. Should the board of supervisors of any county containing a population of less than two hundred thousand and adjoining a city of the first class at any time deem it for the public interest to acquire title to lands and premises required for any streets, highway or boulevard heretofore or hereafter laid out, widened, altered, extended or otherwise improved, it may acquire the same by dedication, or by condemnation under the condemnation law, provided, however, that no land shall be acquired for any street, highway or boulevard in an incorporated village without the consent of the board of trustees of such incorporated village. Such board may direct, by a two-thirds vote, where no buildings are upon the lands, that the title to any piece or parcel of land lying within the lines of any such street, highway, or boulevard shall be vested in the county upon the date of recovery of such dedication or upon the date of the filing of the oath of the condemnation commissioners as provided in the condemnation law, or upon a specified date thereafter and where there are buildings upon such lands, upon a date not less than six months from the date of the filing of said oath. Thereafter, when the condemnation commissioners shall have taken and filed said oath, upon the date of such filing or upon such subsequent date as may be specified, where no buildings are upon such lands and where there are buildings upon such lands upon the date specified by said board of supervisors either before or after the filing of such oath, the same being not less than six months from the date of said filing, the county shall become and be seized in fee of said lands, tenements, and hereditaments in the said resolution mentioned, that shall or may be so required as aforesaid, the same to be held, appropriated, converted and used to and for such purpose accordingly, in like manner as are other public streets in said county. In such cases interest at the legal rate upon the sum or sums to which the owners, lessees, parties or persons are justly entitled upon the date of the vesting of title in the county as aforesaid, from said date to the date of the report of the commissioners shall be allowed

by the commissioners as a part of the compensation to which such owners, lessees, parties or persons are entitled. In the other cases, title, as afore-said, shall vest in the county upon the confirmation by the court of the report of the condemnation commissioners. Upon the vesting of title as herein provided, the county or any person or persons acting under its authority, may immediately, or at any time thereafter take possession of the same, or any part or parts thereof, without any suit or proceeding at law for that purpose. The title acquired by the county, to lands and premises required for a street, shall be in trust, and such lands and premises appropriated and kept open for, or as part of a public street or highway, forever, in like manner as the other streets in the county. (*Added by L. 1915, ch. 679, and amended by L. 1916, ch. 5, in effect Feb. 17, 1916.*)

Powers in general.—The board of supervisors of a county is vested with such powers of local legislation and administration as are conferred upon it by the legislature. Its power is co-extensive with the power expressly granted to it or which is necessarily or reasonably implied from the powers so expressly conferred. *Wadsworth v. Board of Supervisors* (1916), 217 N. Y. 484.

Power to contract with county clerk for reindexing of record.—*Wadsworth v. Board of Supervisors* (1916), 217 N. Y. 484.

Superintendent of the poor, personal expenses.—The County Law does not make the personal expenses of a superintendent of the poor a county charge and they are not a proper charge unless the board of supervisors has expressly so provided in fixing the compensation of the superintendent. *Strong v. Williams* (1915), 167 App. Div. 714, 153 N. Y. Supp. 175.

§ 19. **Printing and distribution of proceedings of board.**—Each board of supervisors shall cause as many copies of the proceedings of its sessions as it may deem necessary, certified by its chairman and clerk, to be printed as a county charge, in a pamphlet volume, as soon as may be after each session, for exchange with other boards, for the members of the board and other town and county officers, and for public distribution. At least three copies of such printed volume shall be forwarded to and filed in each town clerk's office and in the county clerk's office. In counties containing cities of the first class, and in counties containing three cities of the third class, the publication of the proceedings of the board of supervisors may be ordered to be made in a daily newspaper, the work to be done by contract, let to the lowest bidder, after an opportunity to bid therefor has been given to the proprietors of all the daily newspapers printed in the English language in said county; such bid may include the printing and binding in pamphlet volumes of such number of copies of the proceedings of such board as may be required, and also the printing of pamphlet copies thereof for the use of the members of said board at its sessions. Such printed proceedings shall contain a summary statement of all bills against the county, presented to the board and audited and allowed or disallowed, indicating the amount allowed or disallowed. The board of supervisors may as often as it shall be deemed necessary, cause to be printed and distributed in like manner, in the same volume or otherwise, its county laws,

combined with suitable forms and instructions thereunder, and reports of committees and county officers filed with it.

Whenever the proceedings of the board of supervisors of any county are printed in a volume by authority of the board of supervisors, the volume so printed and duly certified by the chairman and clerk of the said board of supervisors to be a true record of such proceedings, shall be and constitute the book of records of the said board. (*Amended by L. 1913, ch. 256, and L. 1916, ch. 606, in effect May 20, 1916.*)

§ 20. Designation of newspapers for publication of session laws.

Right of newspaper to publication of session laws.—The fact that a newspaper has for a long series of years advocated the principles and policies of a political party, gives it no right to the publication of the session laws, etc., unless it is at the time of the designation fulfilling that rôle. *It seems*, that a board of supervisors acting in good faith may designate a newspaper to publish the session laws, etc., on behalf of a political party, although such paper has not always been a party organ, in the place of the paper which had always fulfilled this rôle, but which, upon a particular occasion and in the year just then closing, had concededly varied its policy and refrained from the support of some of the party candidates. *People ex rel. Elmira Advertiser Association v. Gorman* (1915), 169 App. Div. 891, 155 N. Y. Supp. 722.

Designation of newspaper.—The statute relating to the designation of a newspaper to publish session laws and concurrent resolutions does not require the designation of the paper having the largest circulation in the county but leaves a very large discretion to the board of supervisors, and their acts in this respect are purely administrative and not reviewable. *People ex rel. Utica Sunday Tribune Co. v. Hugo* (1916), 93 Misc. 586, 158 N. Y. Supp. 485.

Revocation of designation.—Although this section provides that the "designation of a paper or papers made contrary to the provisions of this section shall be void," a mere suggestion that a designation made does not comply with the provisions of the statute, even though supported by affidavits, is not sufficient to require the action of the board of supervisors to be set aside. *People ex rel. Elmira Advertiser Association v. Gorman* (1915), 169 App. Div. 891, 155 N. Y. Supp. 722.

The designation of a paper having been duly filed with the clerk of the board of supervisors, pursuant to this section, cannot be revoked by the supervisors signing the same, and another paper designated. *Atty. Genl. Opin. 6 State Dep. Rep. 443* (1915).

Mandamus to compel designation.—Where a newspaper in a petition for a writ of mandamus against a board of supervisors in terms asks for an alternative writ, but contends that it is the only newspaper in the county which meets the requirements of the statute, and that it is the duty of the court to direct the board of supervisors to designate such paper, the question must be dealt with upon the theory that the petitioner asks for a peremptory writ, and where the board has made a designation in good faith the petition should be dismissed. *People ex rel. Elmira Advertiser Association v. Gorman* (1915), 169 App. Div. 891, 155 N. Y. Supp. 722.

Certiorari; mandamus, peremptory writ.—A board of supervisors in designating a newspaper under sections 20 and 22 of the County Law, to publish the session laws, etc., does not act judicially but rather in an administrative capacity. Its action is not open to review by certiorari, nor can its decision as to whether a newspaper represents the principles of a political party be set aside by a peremptory writ of mandamus. *People ex rel. Elmira Advertiser Association v. Gorman* (1915), 169 App. Div. 891, 155 N. Y. Supp. 722.

§ 23. **Compensation of supervisors.**—For services of supervisors, except in the counties of Albany, Columbia, Dutchess, Orange, Erie, Hamilton, Herkimer, Montgomery, Niagara, Oneida, Onondaga, Rensselaer, Rockland, Saratoga, Schenectady, Steuben, Suffolk, Ulster and Westchester, each supervisor shall receive from the county compensation at the rate of four dollars per day, and in Broome county at the rate of five dollars per day, for each calendar day's actual attendance at the sessions of their respective boards, and mileage at the rate of eight cents per mile for once going and returning from his residence to the place where the sessions of the board shall be held, by the most usual route, for each regular and special session. In the county of Allegany each supervisor shall receive from the county compensation at the rate of five dollars per day for each calendar day's actual attendance at the sessions of the board of supervisors and mileage at the rate of eight cents per mile for once going and returning every week during any regular or special session of such board from his place of residence to the place where any such sessions of the board is held. In the counties of Hamilton, Herkimer, Niagara, Rockland, Saratoga, Schenectady and Steuben each supervisor shall receive an annual salary, in the county of Herkimer of two hundred and twenty dollars and the mileage hereinabove prescribed, in the county of Hamilton of one hundred and twenty dollars and his reasonable traveling expenses actually and necessarily incurred in once going and returning from his residence to the place where the sessions of the board shall be held, by the most usual route, for each regular and special session, in the county of Niagara of four hundred dollars, in the county of Rockland of four hundred dollars, in the county of Saratoga of three hundred dollars, in the county of Schenectady of five hundred dollars and in the county of Steuben of one hundred and fifty dollars, in lieu of any per diem compensation. In the counties of Dutchess and Orange each supervisor shall receive an annual salary from the county of one hundred and fifty dollars and also mileage at the rate of ten cents per mile for going and returning, once in each week during the annual session of the board of supervisors and when the board is sitting as a board of county canvassers, by the most usually traveled route, from his residence to the place where the sessions of the board shall be held, and in addition thereto compensation at the rate of four dollars per day and mileage as hereinabove provided for each special session of the board which he attends; such compensation and mileage to be paid by the county treasurer on the last day of the annual session in each year. In the county of Suffolk each supervisor shall receive an annual salary of one thousand dollars for all services to the county for board meetings and committee work, in lieu of any per diem compensation. He shall be reimbursed by the county for actual expenses to and from board and committee meetings. In the county of Ulster each supervisor shall receive an annual salary from the county of three hundred and fifty dollars, and also mileage at the rate of eight cents per mile for going and returning once

in each week during the annual session of the board of supervisors, and when the board is sitting as a board of county canvassers, and once in going and returning to and from each special session by the most usually traveled route from his residence to the place where the session of the board shall be held, and in addition thereto he shall receive from the county while actually engaged in any investigation or other duty which may legally be committed to him his actual expenses, and such salary, mileage and expenses shall be audited and paid as other county charges; and such compensation shall be for any and all services which such supervisor shall render to the county and in lieu of all per diem compensation, except that each supervisor may be allowed for his services in making a copy of the assessment-roll and extending taxes as hereinafter provided. Each supervisor, except in the counties of Albany, Allegany, Columbia, Dutchess, Orange, Erie, Montgomery, Niagara, Oneida, Onondaga, Rensselaer, Saratoga, Schenectady, Suffolk and Westchester may also receive compensation from the county at the rate of four dollars per day, and in Broome county at the rate of five dollars per day, while actually engaged in any investigation or other duty which may be lawfully committed to him by the board, except for services rendered when the board is in session and, if such investigation or duty require his attendance at a place away from his residence, and five miles or more distant from the place where the board shall hold its sessions, his actual expenses incurred therein. Each supervisor in the counties of Dutchess, Orange and Allegany shall also be entitled to receive in addition to the compensation hereinabove provided, to be paid in the same time and manner, compensation at the rate of four dollars per day while actually engaged in any investigation or other duty which may be lawfully committed to him by the board of supervisors of his county, together with his actual expenses incurred therein. No other compensation or allowance shall be made to any supervisor for his services, except such as shall be by law a town charge, except that in the counties of Niagara, Hamilton, Herkimer, Saint Lawrence and Saratoga each supervisor, while heretofore or hereafter actually engaged in any investigation, or in the performance of any other duty, which shall have been legally delegated to him by the board of supervisors, except when the board is in session, shall be entitled to receive in addition to the compensation hereinbefore provided, his actual expenses incurred therein. The board of supervisors of any county, except Saratoga and Suffolk counties, may also allow to each member of the board for his services in making a copy of the assessment-roll, three cents for each written line for the first one hundred lines, two cents per line for the second hundred written lines, and one cent per line for all written lines in excess of two hundred, and one cent for each tax actually extended by him on the tax-roll, and, if there be more than one item of tax on a line of the tax-roll, one cent for computing and extending the total of such items. The board of supervisors of any county may also allow to each

L. 1916, ch. 452.

Deputy county clerk.

§ 162.

member of the board for his services in making a copy of the tax-roll for delivery to the collector compensation at the rate of one-half the compensation authorized for making a copy of the assessment and tax-rolls. In the county of Suffolk the extension and copying of the tax-rolls shall be performed by clerks and be a town charge. (*Amended by L. 1910, ch. 279, L. 1911, ch. 554, L. 1912, ch. 34, L. 1913, chs. 254 and 355, L. 1914, ch. 357, L. 1915, ch. 332, and L. 1916, ch. 426, in effect Jan. 1, 1917.*)

Taxpayer's action is proper remedy for recovery of moneys paid by a county to a supervisor on improper audit by board. *Smith v. Hedges* (1915), 169 App. Div. 115, 154 N. Y. Supp. 867, affg. 87 Misc. 439, 150 N. Y. Supp. 899.

§ 26. County records.

Power to contract with county clerk of Livingston County for reindexing of records.—*Wadsworth v. Board of Supervisors* (1916), 217 N. Y. 484.

§ 45. Establishment of county hospital for tuberculosis.

Approval of State Commissioner of Health.—See *People ex rel. Buckbee v. Biggs* (1916), 171 App. Div. 373, 156 N. Y. Supp. 1038.

§ 161. General powers and duties; county clerk.

Power of board of supervisors to contract with county clerk for reindexing of records.—*Wadsworth v. Board of Supervisors* (1916), 217 N. Y. 484.

§ 162. Deputy clerk.—Every county clerk shall, within ten days after entering upon the duties of his office, make, under his hand and seal, and record in his office, a written appointment of some suitable person to be deputy clerk of his county. In counties containing a population of more than one hundred thousand by the last preceding federal census or state enumeration, the county clerk, may, in like manner, appoint not to exceed two additional deputies. The clerks of the counties of New York, Kings, Bronx, Queens and Richmond may also designate assistants or clerks appointed by him and employed in the naturalization of aliens to be special deputy county clerks authorized to administer oaths required by the naturalization laws; but such special deputy county clerks shall not receive any compensation other than the salaries paid them as such assistants or clerks. Every such deputy, and every such special deputy designated pursuant to the provisions of this section, shall hold such office during the pleasure of the clerk. When any such deputy is temporarily absent, disqualified, or disabled, the clerk shall appoint some one of his assistants to act as a deputy in his place for a period of not exceeding thirty days and without any additional compensation. Before any such deputy so appointed, or special deputy so designated pursuant to the provisions of this section, enters on his duties as such he shall take the constitutional oath of office. If there shall be no county clerk, or deputy county clerk, or assistant authorized to act as deputy, the county judge may designate in writing, to be recorded in the county clerk's office, a suitable person to act as county clerk with all the powers, duties and privileges of the of-

§§ 180, 232.

Sheriffs.

L. 1916, ch. 87.

fice, and subject to the liabilities thereof, until a county clerk shall have been elected, or appointed, and qualified. This section shall not apply to or affect any special deputy clerk to the county clerk appointed pursuant to the provisions of the judiciary law of this state. (*Amended by L. 911, ch. 727, and L. 1916, ch. 452, in effect May 9, 1916.*)

§ 180. *Sheriffs. Subd. 1, amended by L. 1916, ch. 87, in effect March 30, 1916, as follows:*

1. To be elected in each of the counties a sheriff, and in each of the counties containing a population of one hundred thousand and over, except Nassau county, four coroners, and in all other counties such number of coroners, not more than four, as shall be fixed by the board of supervisors, who shall respectively hold their offices for three years from and including the first day of January succeeding their election. The board of supervisors of a county containing a population of less than one hundred thousand, and having more than one coroner, may, by resolution, determine that after the first day of January of a year to be specified in such resolution, the number of coroners in such county shall be reduced to a specified number not less than one, and may by such resolution fix the term of coroners to be thereafter elected in such county so that the terms of all the coroners therein will expire on the first day of January of the year specified in the resolution.

§ 202. *Assistant district attorneys.*

Power of district attorney to employ private detectives; compensation of detectives is county charge.—Although there is no express statutory provision allowing a district attorney to employ private detectives without authorization by the board of supervisors or making the compensation of such detectives a county charge, a district attorney may, nevertheless, employ private detectives where their services are necessary to the proper discharge of his official duties and the reasonable recompense and disbursements of said detectives are a county charge which should be audited by the board of supervisors. But the supervisors are not required to audit the bill as presented and may scrutinize the items before allowing the same. *People ex rel. Watts v. Board of Supervisors* (1915), 170 App. Div. 334, 156 N. Y. Supp. 148.

§ 220. *Superintendents of the poor.*

L. 1858, chap. 118, abolishing the office of Superintendent of the Poor in the county of Putnam, was not repealed by this section. *Atty. Genl. Opin. 6 State Dep. Rep. 439* (1915).

§ 232. *Compensation of county judge and surrogates.—Subd. 29, amended by L. 1916, ch. 382, in effect May 1, 1916, as follows:*

29. Nassau..... 5,000.00 5,000.00

Subd. 31, amended by L. 1916, ch. 86, in effect Jan. 1, 1917, as follows:

31. Oneida5,000.00 5,000.00

Subd. 33, amended by L. 1916, ch. 252, in effect Jan. 1, 1917, as follows:

33. Ontario.....2,000.00 2,000.00

L. 1916, ch. 442.

Powers of state comptroller.

Code civ. Pro. § 744a.

Subd. 55, amended by L. 1916, ch. 132, in effect Apr. 6, 1916, as follows:

55. Warren..... 5,000.00

Subd. 61, as amended by L. 1910, ch. 300, amended by L. 1916, ch. 382, in effect May 1, 1916, as follows:

61. The salaries provided in the preceding subdivision of this section for the county judge and surrogate of each of the counties of Onondaga, Queens, Rensselaer and Tompkins shall take effect upon the expiration of the terms of the incumbents in office on February seventeenth, nineteen hundred and nine, respectively, and until the expiration of said terms such officers shall receive the salaries authorized by law on January first, nineteen hundred and nine. The salaries provided in subdivision twenty-nine of this section for the county judge and surrogate of the county of Nassau shall take effect upon and after January first, nineteen hundred and seventeen, and until that date the county judge and surrogate of the county of Nassau shall receive the salary authorized by law on January first, nineteen hundred and sixteen.

Subd. 67, added by L. 1916, ch. 132, in effect Apr. 6, 1916, as follows:

67. The salary provided in subdivision fifty-five of this section for the county judge and surrogate of the county of Warren shall take effect upon the expiration of the term of the present incumbent, and until the expiration of such term such officer shall receive the salary authorized by law on January first, nineteen hundred and eleven.

§ 240. County charges.

Sheriff's charges and expenses in successful defense of charges against him.—Under subdivision sixteen the reasonable costs and expenses incurred by a sheriff in the successful defense of charges made to the governor against him in a proceeding for his removal from office are legal county charges, and when his claim therefor has been duly allowed and audited by the board of supervisors a taxpayer's action will not lie to recover the money paid pursuant to such audit. *Gavin v. Board of Supervisors* (1916), 93 Misc. 264, 157 N. Y. Supp. 973.

Liability for support of children committed to a juvenile asylum under sections 486 and 1298 of the Penal Law is a county charge. *People ex rel. New York Juvenile Asylum v. Board of Supervisors* (1915), 168 App. Div. 863, 153 N. Y. Supp. 1076.

COURT FUNDS.

Code of Civil Procedure.

§ 744-a. **Powers of state comptroller.**—The comptroller may examine the books, accounts and vouchers of every bank and trust company or other depository or of any public official in the state, in anywise relating to moneys and securities paid into court, under an order of any court of record or directed to be paid into court by statute; and where the same has not been paid to the chamberlain of the city of New York or to any county treasurer of the state, the comptroller upon application duly made shall be entitled to an order directing the payment and transfer of all such money

Code Civ. Pro. §§ 283, 284. Appropriation cases; calendar practice. L. 1916, ch. 343.

and securities, from any such bank, trust company, depository or public official to the treasurer of the proper county, and in the city of New York to the city chamberlain. (*Amended by L. 1916, ch. 442, in effect May 9, 1916.*)

§ 747. **Order of court as to disposition.**—Each court may direct that money paid into that court in any action or proceeding brought therein, or any bond, mortgage or other security which represents property belonging to any suit or party interested therein, may, after having been deposited with the county treasurer or city chamberlain as required by section seven hundred and forty-five of this act, be paid out, transferred, invested or reinvested in any manner or form that appears to it best for the interests of the owners thereof. But such directions must be embodied in an order or decree of said court, founded upon proper and sufficient evidence satisfactory to the court that such disposition of the property is best for the interests of the owners thereof or parties interested therein. (*Amended by L. 1916, ch. 443, in effect May 9, 1916.*)

COURT OF CLAIMS.

Code of Civil Procedure.

§ 283. **Determination of appropriation cases; assignment of judges.**—At least two of the judges of the court of claims shall be designated by the presiding judge thereof to devote their entire time, or so much thereof as shall be necessary, to the hearing and determination of claims filed against the state arising out of the appropriation of lands, structures, waters, franchises or other property in connection with the improvement of the Erie, Champlain and Oswego canals as provided by chapter one hundred and forty-seven of the laws of nineteen hundred and three, and acts amendatory thereof and supplemental thereto, the Cayuga and Seneca canals as provided by chapter three hundred and ninety-one of the laws of nineteen hundred and nine, and acts amendatory thereof and supplemental thereto, and for the purpose of furnishing proper terminals and facilities for barge canal traffic as provided for by chapter seven hundred and forty-six of the laws of nineteen hundred and eleven, and acts amendatory thereof and supplemental thereto. Such designations of judges may be changed in the discretion of the presiding judge, provided at least two of such judges be at all times assigned to the hearing and determination of such claims. Nothing in this section contained, however, shall be construed to limit the power of the judges so designated, or either of them, from hearing and determining claims other than such appropriation cases whenever and to the extent that it appears to the satisfaction of such judges, or either of them, that such appropriation cases do not require their attention or that of either of them. (*Added by L. 1916, ch. 343, in effect Apr. 27, 1916.*)

§ 284. **Calendar practice.**—A calendar shall be prepared by the clerk

L. 1916, ch. 444.

Application to sell real property.

Code Civ. Pro. § 1845.

of the court of claims for each regular session thereof. Such calendar shall be comprised of all pending claims in the district where such session is to be held and the claims shall appear therein in the order of the date of the filing thereof respectively. The attorney-general may notice any of such claims for trial at any such term by serving upon the attorney for the claimant a notice of trial at least fourteen days before the commencement of such term. When any claim of the character mentioned in the last preceding section is reached for trial by the court, if the claimant fails to appear, or if he appears but is not ready to proceed to the trial thereof, the court, in its discretion, may proceed forthwith to take proofs and testimony therein offered by the state or otherwise, and may make an award in accordance therewith and cause a judgment to be entered thereon. If, in such a case, the court shall decide not to proceed forthwith to take such proofs and testimony, interest shall not accrue or be allowed upon such claim between such date and the entry of judgment in such case, unless, in the exercise of its discretion, for good cause shown, the court shall otherwise determine.

When any claim other than one of those mentioned in the last preceding section is noticed for trial as herein provided, if the claimant fails to appear, the court, upon the motion of the attorney-general, may dismiss the same, in which event such default shall not be opened nor shall such claim be restored to the calendar except upon the motion of the attorney for the claimant, based upon affidavits showing a reasonable and satisfactory excuse for such default and that such claim is a meritorious one. Such notice of motion and the affidavits upon which the same is based shall be served upon the attorney-general at least eight days before such application, unless a shorter time shall be ordered by the court. Whenever any interest-bearing claim, other than one of those mentioned in the last preceding section, shall have been dismissed and thereafter restored to the calendar as herein provided, no interest shall accrue or be allowed thereon between the date of such dismissal and the entry of judgment in such case. (*Added by L. 1916, ch. 343, in effect Apr. 27, 1916.*)

CREDITOR'S ACTION.

Code of Civil Procedure.

§ 1845. *Effect of application to sell real property.*—Where it appears that, at the time of the commencement of an action to enforce the liability declared in section one hundred and one of the decedent estate law, a proceeding for the judicial settlement of the accounts of the executor or administrator of decedent in which an order to dispose of real property of the decedent for the payment of his debts may be made, is pending in a surrogate's court having jurisdiction, the proceedings in the action, subsequent to the complaint, must be stayed by the court, until the proceeding is disposed of, unless the plaintiff elects to discontinue. If an

order to dispose of real property is granted, the action must be dismissed, unless the plaintiff has alleged in his complaint, or alleges in a supplemental complaint, that real property, other than that included in the decree, descended or was devised to the defendants. If the plaintiff elects to proceed under such an allegation, he is entitled to a preference in payment, out of the real property, with respect to which the allegation is made; but he cannot share, as a creditor, in the distribution of the money, arising from the disposal of the real property, described in the order, and the judgment in the action does not charge, or in any way affect, that property. (*Amended by L. 1916, ch. 444, in effect May 9, 1916.*)

DEBTOR AND CREDITOR LAW.

(L. 1909, ch. 17.)

§ 12. Citation for judicial settlement of account.

Sale of assets by assignee, order of court and notice to creditors.—In conformity with the extensive amendments to the Debtor and Creditor Law effected by chapter 360 of the Laws of 1913 and chapter 469 of the Laws of 1915, an assignee for the benefit of creditors may not sell at public auction the assets of the assigned estate without previous order of the court obtained on the return of notice to creditors and others interested. *Matter of Gurian* (1915), 92 Misc. 296, 155 N. Y. Supp. 930.

Final accounting; reference.—The court is without power to dispense with a reference on the hearing of the final account of an assignee for the benefit of creditors. *Matter of McMahon* (1915), 92 Misc. 305, 155 N. Y. Supp. 864.

§ 13. Citation on petition of creditor.

Right of creditor to setoff; unmatured claim against debtor.—Since the enactment of this section, providing that debts of the assignor may be proved and allowed against his estate "whether due or not due," unmatured claims against the debtor are subject to the right of setoff by a creditor. *Matter of Bluestone* (1915), 169 App. Div. 462, 155 N. Y. Supp. 161.

§ 230. Compositions by joint debtors.

Where the indorsers of a promissory note before it became due entered into a composition agreement with their creditors, and the bank holding the note, with knowledge of the composition, received, retained and receipted for checks in part payment from the committee of the creditors, from which it was only entitled to share in assets upon becoming bound by the composition agreement, the indorsers may, under section 230 of the Debtor and Creditor Law, compel the bank to release them from liability on the note, as by sharing in the assets it became subject to the provisions of the statute. *Matter of Samra* (1915), 169 App. Div. 604, 155 N. Y. Supp. 411.

DECEDENT ESTATE LAW.

(Laws of 1909, ch. 18.)

§ 17. Devises and bequests to certain societies, associations and corporations.

Application.—This section does not apply where the testator leaves a first cousin as nearest of kin. *Matter of Danklefsen* (1916), 171 App. Div. 339, 157 N. Y. Supp. 119. See *Matter of Murray* (1915), 92 Misc. 100, 155 N. Y. Supp. 185.

Devise to individuals in perpetuity for charitable use; devise exceeding one-half of testator's estate.—A devise to trustees in perpetuity, the income to be applied to the maintenance of churches, ministers and missionaries of a certain religious denomination located within certain counties, does not offend this section of the Decedent Estate Law, although the gift exceeds one-half of the testator's estate. Said statute limits the amount of devises and bequests only where the gift is to the charitable institution itself, or, *it seems*, to trustees who are to turn over the corpus to such charitable institution. The statute does not apply to a devise to individuals for charitable uses. *Decker v. Vreeland* (1915), 170 App. Div. 234, 156 N. Y. Supp. 442.

Ascertaining value of estate.—Where a computation of the amount of a decedent's estate showed that the amount of bequests to charitable uses did not exceed one-half of the estate or violate the provisions of chapter 360 of the Laws of 1860, from which this section was derived, it is proper for the court to make the same holding, as a matter of law, where the subsequent expiration of certain trusts in no way increased the amount of the bequests to charity. *It seems*, that chapter 360 of the Laws of 1860, limiting bequests to charitable uses, authorizes by implication the withholding of the distribution of an estate when necessary to determine whether the amount devised or bequeathed for such purposes is in excess of the amount authorized. *Hughes v. Stoutenburgh* (1915), 168 App. Div. 512, 154 N. Y. Supp. 65.

In the application of this section the rule of calculation adopted in *Matter of Johnston*, 76 Misc. 391, 137 N. Y. Supp. 166 to wit: "Ascertain the money value of the estate as it remained at death, subtract therefrom the amount of decedent's debts, pay one-half of the remainder to the corporate legatees, whose legacies were subject to reduction," must be followed. Where by reason of delay in the disposition of the estate there have been decreases as well as appreciations in the value of its property, and there have been accruals of interest or income, the decreases must be taken into consideration in ascertaining the value of the estate as of the time of the death of the testatrix. *Matter of Brooklyn Trust Co.* (1915), 92 Misc. 695, 157 N. Y. Supp. 671.

Where in the application of this section it becomes necessary to include in the valuation of the estate the value of vested remainders, they must be appraised by the use of the life tables. *Matter of Brooklyn Trust Co.* (1915), 92 Misc. 695, 157 N. Y. Supp. 671.

Allowance for dower.—Where all persons interested in a decedent's estate acquiesced in a decree of the surrogate determining that a legacy which was expressly made in lieu of dower be paid to the testator's widow, her dower rights were thereby released as of the date of the death of the testator. Hence, the dower rights are not to be considered in determining whether the testator has left more than one-half of his estate to charitable uses contrary to the provisions of this section (formerly, ch. 360 of laws of 1860). *Hughes v. Stoutenburgh* (1915), 168 App. Div. 512, 154 N. Y. Supp. 65.

§ 19. Devise or bequest to certain benevolent, charitable and scientific corporations.

Application; death of testator within two months after making will.—The New York Bible and Common Prayer Book Society, incorporated by special act and being expressly made subject to chapter 360 of the Laws of 1860 by act of Legislature, is not within the provisions of chapter 319 of the Laws of 1848 (Decedent Estate Law, § 19) and may take a legacy although the testator died within two months after making his will. *Matter of New York Life Insurance & Trust Co.* (1915), 167 App. Div. 131, 152 N. Y. Supp. 881.

§ 21. Manner of execution of will.

Due execution of will established.—Matter of MacDowell (1915), 170 App. Div. 245, 156 N. Y. Supp. 387.

Subscription at end of will, see Matter of Talbot, 91 Misc. 382, 154 N. Y. Supp. 283.

Declaration of publication; probate refused where there is no proof that testatrix mentioned to attesting witnesses that the paper signed was a will. Matter of Bryant (1914), 148 N. Y. Supp. 917.

Testimony of subscribing witnesses; sufficiency of, when corroborated by testimony of attorney who drew the will. Matter of King (1915), 89 Misc. 638, 154 N. Y. Supp. 238.

§ 29. Devise or bequest to child or descendant not to lapse.

Words "shall die," construed. See Lightfoot v. Kane (1915), 170 App. Div. 412, 415, 156 N. Y. Supp. 112.

See generally, Matter of Tamargo (1915), 170 App. Div. 10, 13, 155 N. Y. Supp. 845; Matter of Pearsall (1915), 91 Misc. 212, 217, 155 N. Y. Supp. 59.

§ 34. Revocation and cancellation of written wills.

Evidence as to contents of paragraphs cut from will by testatrix; attempted cancellation of particular clauses of will; effect of failure to establish contents of portion of clauses cut from will. Where in a proceeding for the probate of a will it appears that the testatrix during her lifetime had cut and completely removed a paragraph containing a money legacy, and also a part of the residuary clause, and that these portions of the will have not been found, evidence by a neighbor of the testatrix based upon a conversation with her about three months after the date of the will, as to the contents of the missing parts, is hearsay, incompetent and no part of the *res gestæ*. Even if the testimony of the neighbor of the testatrix had been competent, it was insufficient to establish the contents of the missing clauses of the will, where the only other testimony was that of the attorney who drew the will, who could only remember that the one clause contained a money legacy for some amount "in the thousands" in favor of a certain beneficiary. Since attempted cancellation of particular clauses of a will by their obliteration is ineffectual to revoke such clauses, the remaining portion of the will may be probated, even if the contents of the obliterated parts cannot be ascertained, unless it can be seen that the missing parts will affect or alter the remaining parts. If the contents of the portion of the residuary clause cut from the will in question cannot be ascertained, then there will be intestacy as to this portion of the residue, for a lapsed or ineffectual gift of a portion of the residue does not fall into or become a part of the remaining residue. If the money legacy cut from the will fails because its amount and donee cannot be ascertained, such unknown amount will sink into the residue as in the case of a lapsed legacy. Matter of Kent (1915), 169 App. Div. 388, 155 N. Y. Supp. 894.

§ 35. Revocation by marriage and birth of issue.

The question whether an ante-nuptial will has been revoked by a subsequent marriage and birth of issue must be determined by the state of facts and the condition of the testator's property at the date of the will. Hence, proof of the acquisition of additional property after the making of such a will cannot avail to prevent its revocation under the statute. Matter of Del. Genovese (1915), 169 App. Div. 140, 154 N. Y. Supp. 806.

Marriage and parenthood do not raise a presumption of an intent to revoke, but are in themselves a revocation, unless express provision be made in view of the

new duties arising from the changed relation. *Matter of Del. Genovese* (1915), 169 App. Div. 140, 154 N. Y. Supp. 800.

Mere accumulation of property in addition to that possessed at the date of the ante-nuptial will cannot be considered as a "provision" made by the testator for the new dependents upon him as a husband and father. *Matter of Del. Genovese* (1915), 169 App. Div. 140, 154 N. Y. Supp. 800.

§ 47. Validity and effect of testamentary dispositions.

See generally, *Matter of Schober* (1915), 90 Misc. 230, 154 N. Y. Supp. 309.

§ 90. Relatives of the half-blood.

Application.—Where a testatrix gave to her daughter the net income of her estate for life, remainder to the "heirs" of said daughter upon her death, and the only heir of the life tenant at the time of her decrease was her half sister, a daughter of her father by his first wife, the half sister is entitled to the remainder, to the exclusion of the brothers and sisters of the testatrix and their descendants. Section 90 of the Decedent Estate Law, which provides that relatives of the half blood shall not inherit from an intestate, if they are not of the blood of the ancestor from whom the property descends, has no application to the will aforesaid, for the remainderman takes under the will itself and not directly by descent or distribution from the life tenant. *Stack v. Leberman* (1915), 169 App. Div. 92, 154 N. Y. Supp. 490.

Where a sister inherits lands from her brothers "they are ancestors" from whom the estate is derived within the meaning of this section, and the lands so inherited by the sister descend to her brother of the half blood and to the descendants of a deceased brother of the half blood under the circumstances aforesaid. *Cornell v. Child* (1915), 170 App. Div. 240, 156 N. Y. Supp. 449.

"Of the blood" of the intestate.—The half brother of an intestate, who is also her cousin by reason of the fact that the intestate's father married his deceased wife's sister, and also the descendants of the deceased half brother, being nieces of the half blood, are "of the blood" of the intestate and inherit her real estate to the exclusion of other cousins who are descendants of a deceased aunt of the intestate. *Cornell v. Child* (1915), 170 App. Div. 240, 156 N. Y. Supp. 449.

Relatives of the half-blood; intestacy.—A decedent who died intestate seized of a farm which descended to him from his father left no widow or descendant, no brother or sister nor descendant of a deceased brother or sister, no paternal uncle or aunt nor descendant of any such deceased uncle or aunt. Held, that under section 90 of the Decedent Estate Law the decedent's maternal and half-blood cousins took the inheritance. *Matter of Millman* (1916), 94 Misc. 7.

§ 91. Relatives of husband and wife.

Construction.—This section does not create a new class of heirs at law, but in operation is tantamount to a gift from the state of its escheats or rights of what is known as caducary succession. The donees of the state stand in no better position than the state and may not contest the probate of the wife's will in order to promote the state's escheat. The statute cannot be construed as a release from the state, as the husband's heirs at law have not a title to support the release. *Matter of Leslie* (1915), 92 Misc. 663, 156 N. Y. Supp. 346.

§ 98. Distribution of personal property of decedent.

Cousins.—Where a testator died in 1915 leaving him surviving no next of kin nearer than cousins and children of deceased cousins, the cousins take the entire personal estate, and an application by the children of deceased cousins to intervene in a proceeding to probate the will upon a claim that petitioners would be entitled

Code. Crim. Pro. §§ 903, 910. Record of conviction; discharge. L. 1916, ch. 243.

to share in decedent's estate if it were found that he died intestate must be denied. *Matter of Polausky* (1915), 90 Misc. 273, 154 N. Y. Supp. 669.

§ 120. Actions for wrongs by or against executors and administrators.

Action against a non-resident for alleged illegal declaration of dividends survives the death of the defendant. *German-American Coffee Co. v. Johnston* (1915), 168 App. Div. 317, 153 N. Y. Supp. 866.

DECEDENT'S ESTATES.

See Surrogate's Courts; Executions.

DENTISTRY.

See Public Health L., §§ 190 ff.

DISORDERLY PERSONS.

Code of Criminal Procedure.

§ 903. Certificate to constitute record of conviction, and to be filed; commitment thereon; probation. The magistrate must immediately cause the certificate, which constitutes the record of conviction, to be filed in the office of the clerk of the county, and must, by a warrant signed by him with his name of office, commit the defendant to the county jail, or in the city of New York, to the city prison or penitentiary of that city, or in the county of Monroe, to the penitentiary of that county, or in the county of Westchester to the penitentiary and workhouse of that county, for not exceeding six months at hard labor, or until he gives the security prescribed in section nine hundred and one; or, if the defendant be a person described in the first or second subdivision of section eight hundred and ninety-nine, the magistrate may require him while on probation to pay through the probate officer weekly a reasonable sum for the support of his wife or children. (*Amended by L. 1916, ch. 243, in effect Sept. 1, 1916.*)

Amendment relates to Westchester county.

§ 910. Court may discharge, place on probation, or authorize the binding out of disorderly persons.—The court may discharge a person so committed from imprisonment, either absolutely or on parole under a salaried probation officer, or upon his giving security as provided in section nine hundred and one, or if he be a minor, may authorize the county superintendents of the poor, or the overseers of the poor of the town, or in the city of New York, the commissioner of charities, or in the county of Westchester, the commissioner of charities and corrections, to bind him out in some lawful calling as a servant, apprentice, mariner or otherwise, until he be of age, or if he be of age, to contract for his service with any person, as a laborer, servant, apprentice, mariner or otherwise, for not exceeding one year. The binding out or contract, pursuant to this section, has the same effect as the indenture of an apprentice, with his own consent and that of

L. 1916, ch. 243.

Commitment to prison.

Code Crim. Pro. § 911.

his parents, and subjects the person bound out or contracted, to the same control of his master and of the county court of the county, as if he were bound as an apprentice. (*Amended by L. 1916, ch. 243, in effect Sept. 1, 1916.*)

Amendment relates to Westchester county.

§ 911. Court may also commit him to prison; nature and duration of imprisonment.—The court may also, in its discretion, order a person convicted as a disorderly person, to be kept in the county jail; or, in the city of New York, in the city prison or penitentiary of that city; or in the county of Westchester, in the penitentiary and workhouse of that county, for a term not exceeding six months at hard labor. (*Amended by L. 1916, ch. 243, in effect Sept. 1, 1916.*)

Amendment relates to Westchester county.

§§ 6, 7, 11, 11a. Solemnization of marriages; duty of city clerk. L. 1916, ch. 524.

DOMESTIC RELATIONS LAW.

(L. 1909, ch. 19.)

§ 6. Void marriages.

Proof of prior marriage is not alone sufficient for annulment; there is a presumption in favor of innocence of defendant, to be overcome by evidence showing that former spouse had not absented himself for a period sufficient to raise presumption of death. *Fagin v. Fagin* (1915), 88 Misc. 304, 151 N. Y. Supp. 809; *Lazarowicz v. Lazarowicz* (1915), 91 Misc. 716, 154 N. Y. Supp. 107.

Absence of five years.—Under this section, providing that “a marriage is absolutely void if contracted by a person whose husband . . . by a former marriage is living, unless . . . such former husband . . . has absented himself . . . for five successive years then last past without being known to such person to be living during that time,” where a wife who knows that her husband has not been absent continuously for five years last past but has lived with her within that period, contracts, through fraud and deceit, a second marriage, such marriage is absolutely void. *Butler v. Butler* (1916), 93 Misc. 258, 157 N. Y. Supp. 188.

§ 7. Voidable marriages.

The committee of the person and property of an incompetent cannot as such, under section 2340 of the Code of Civil Procedure, maintain an action to annul the marriage of the incompetent on the ground that he is a lunatic and was such at the time of his marriage. Since the action to annul a marriage is purely statutory, such an action can be maintained only by a relative, or next friend, of the incompetent, or the incompetent himself, after his restoration to sanity. *Walter v. Walter* (1916), 217 N. Y. 439, affg. 170 App. Div. 870, 156 N. Y. Supp. 713.

§ 11. **By whom a marriage must be solemnized.**—*Subd. 2 amended by L. 1916, ch. 524, in effect May 12, 1916, as follows:*

2. A mayor, recorder, city magistrate, police justice or police magistrate of a city, or the city clerk of a city of the first class or any of his deputies designated by him for such purpose, as provided in section eleven-a of this chapter, except that in cities which contain more than one hundred thousand and less than one million inhabitants, a marriage shall be solemnized by the mayor, or police justice, and by no other officer of such city, except as provided in subdivisions one and three of this section.

§ 11-a. **Duty of city clerk in certain cities of the first class.**—Whenever persons to whom the city clerk of a city of the first class having more than one million inhabitants has issued a marriage license shall request him to solemnize the rites of matrimony between them and present to him such license it shall be the duty of such clerk, either in person or by one of his deputies designated by him as provided in subdivision two of section eleven of this chapter, to solemnize such marriage; provided, however, that nothing contained either in this section or in subdivision two of section eleven of this chapter shall be construed as empowering or requiring either the

L. 1916, ch. 381.

Records of marriages.

§§ 19, 50, 51.

said city clerk or any of his deputies designated by him to perform marriage ceremonies, to solemnize marriages at any place other than at the office of such city clerk. In all cases in which the city clerk of such city of the first class or one of his deputies shall perform a marriage ceremony such official shall demand and be entitled to collect therefor a fee of two dollars, which sum shall be paid by the contracting parties before or immediately upon the solemnization of the marriage; and all such fees so received shall be paid over monthly to the treasurer of the city. (*Added by L. 1916, ch. 524, in effect May 12, 1916.*)

§ 19. Records to be kept by town and city clerks.—Each town and city clerk hereby empowered to issue marriage licenses shall keep a book in which he shall record and index all affidavits, statements, consents and licenses, together with the certificate attached showing the performance of the marriage ceremony, which book shall be kept and preserved as a part of the public records of his office. Whenever an application is made for a search of such records the city or town clerk may make such search and furnish a certificate of the result to the applicant upon the payment of a fee of fifty cents for a search of one year and a further fee of ten cents for each additional year, which fees shall be paid in advance of such search. All such affidavits, statements and consents, immediately upon the taking or receiving of the same by the town or city clerk, shall be recorded and indexed and shall be public records and open to public inspection. On or before the fifteenth day of each month the said town and city clerk shall file in the office of the county clerk of the county in which said town or city is situated the original of each affidavit, statement, consent, license and certificate, which have been filed or made before him during the preceding month. He shall not be required to file any of said documents with the county clerk until the license is returned with the certificate showing that the marriage to which they refer has been actually performed. (*Amended by L. 1912, ch. 241 and L. 1916, ch. 381, in effect May 1, 1916.*)

§ 50. Property of married women.

Since the enactment of the Married Woman's Acts, a husband and wife owning land as tenants by the entirety have equal rights; each is a tenant in common with the right of survivorship, and when land so owned by a husband and wife has been damaged by a change of grade in a village street, an award to the husband does not bind the wife nor include her interest, and she may make her claim for damages independent of her husband. *Goodrich v. Village of Otego* (1915), 216 N. Y. 112.

§ 51. Powers of married women.

There is no obligation upon a husband to pay his wife's debts; his obligation is to supply her with necessities, but those are his debts and not hers. *Werner v. Werner* (1915), 169 App. Div. 9, 154 N. Y. Supp. 570.

Contract not relieving husband from liability to support wife.—A provision in a contract under seal between a husband and wife, under which the wife, in order to induce her husband to refrain from re-entering the police department as an employee,

§§ 52, 56, 72, 111, 112.

Voluntary adoption.

L. 1916, ch. 453.

agrees to pay him a certain sum annually that nothing therein contained shall obligate the husband to pay his wife's debts, and that he "shall receive the said net annual income of \$10,000," does not "relieve the husband from his liability to support his wife" within the meaning of this section. *Werner v. Werner* (1915), 169 App. Div. 9, 154 N. Y. Supp. 570.

§ 52. Insurance of husband's life.

Claim by receiver in supplementary proceedings.—On a motion for an order requiring a judgment debtor to turn over to his receiver in supplementary proceedings a certain policy of life insurance which, though his wife was named as beneficiary therein, contains a clause reserving to the judgment debtor the right to change the beneficiary, the surrender value of the policy may be applied in payment of his debts under section 52 of the Domestic Relations Law. *Clark v. Shaw* (1915), 91 Misc. 245, 154 N. Y. Supp. 1101.

§ 56. Husband and wife may convey to each other.

See generally, *Matter of Klatzl* (1915), 216 N. Y. 83, 85.

§ 72. Payment of wages to minor; when valid.

Notice to employer.—Under the terms of this statute title to wages earned by a minor under a contract of service, unless notice is given within thirty days by the parent, vests, *as between the employer and the employee*, in the employee, and the parent or guardian can thereafter by notice obtain title only to those wages earned thereafter. *Langer v. Kaufman* (1916), 94 Misc. 216, 157 N. Y. Supp. 825.

§ 111. Whose consent to adoption necessary.

Where a mother, a widow, has been deprived of the custody of her children and they have been committed to a charitable institution upon a judicial determination that the mother is a dissolute person and has neglected them in violation of section 486 of the Penal Law, she cannot attack an order of the Surrogate's Court authorizing the adoption of said children by their uncle merely because the proceedings were had without notice to her. A determination of the Children's Court committing the children to the charitable institution as aforesaid had the effect of judicially depriving the mother of their custody within the meaning of our adoption statute. *Matter of Antonopoulos* (1916), 171 App. Div. 659, 157 N. Y. Supp. 587.

§ 112. Requisites of voluntary adoption.—In adoption the following requirements must be followed:

1. The foster parents or parent, the person to be adopted and all the persons whose consent is necessary under the last section, must appear before the county judge or the surrogate of the county where the foster parent or parents reside, or, if the foster parents or parent do not reside in this state, in the county where the minor resides, and be examined by such judge or surrogate, except as provided by the next subdivision.

2. They must present to such judge or surrogate an instrument containing substantially the consents required by this chapter, an agreement on the part of the foster parents or parent to adopt and treat the minor as his, or her or their own lawful child, and a statement of the age of the person to be adopted, as nearly as the same can be ascertained, which statement shall be taken *prima facie* as true. If a change in the name of the

L. 1916, ch. 453.

Voluntary adoption; effect.

§§ 113, 114.

minor is desired, such instrument may also state the new name by which the minor shall be known. The instrument must be signed by the foster parents or parent and by each person whose consent is necessary to the adoption, and severally acknowledge by said persons before such judge or surrogate; but where a parent or person or institution having the legal custody of the minor resides in some other country, state or county, his or their written acknowledged consent, or the written acknowledged consent of the officers of such institution, certified as conveyances are required to be certified to entitle them to record in a county in this state, is equivalent to his or their appearance and execution of such instrument. In all cases where the consents of the persons mentioned in subdivision one, two, three, and four of section one hundred and eleven have been waived as provided in subdivision five of such section, or where the person to be adopted is of the age of twenty-one years or upwards, notice of such application shall be served upon such persons as the judge or surrogate may direct. (*Amended by L. 1915, ch. 352, and L. 1916, ch. 453, in effect May 29, 1916.*)

§ 113. **Order.**—If satisfied that the moral and temporal interests of the person to be adopted will be promoted thereby, the judge or surrogate must make an order allowing and confirming such adoption, reciting the reasons therefor, and directing that the person to be adopted shall henceforth be regarded and treated in all respects as the child of the foster parent or parents. If the judge or surrogate is also satisfied that there is no reasonable objection to the change of name proposed, the order must also direct that the name of the minor be changed to such name as shall have been designated in the instrument mentioned in the last section. Such order, and the instrument and consent, if any, mentioned in the last section must be filed and recorded in the office of the county clerk of such county. The fact of illegitimacy shall in no case appear upon the record. (*Amended by L. 1915, ch. 352, and L. 1916, ch. 453, in effect May 29, 1916.*)

§ 114. **Effect of adoption.**—Thereafter the parents of the person adopted are relieved from all parental duties toward, and of all responsibility for, and have no rights over such child, or to his property by descent or succession. Where a parent who has procured a divorce, or a surviving parent, having lawful custody of a child, lawfully marries again, or where an adult unmarried person who has become a foster parent and has lawful custody of a child, marries, and such parent or foster parent consents that the person who thus becomes the stepfather or the stepmother of such child may adopt such child, such parent or such foster parent, so consenting, shall not thereby be relieved of any of his or her parental duties toward, or be deprived of any of his or her rights over said child, or to his property by descent or succession. If the order allowing and confirming the adoption shall direct that the name of the child be changed, the child shall be known by the new name designated in such order. His rights of inheri-

§ 115.

Adoption from charitable institutions.

L. 1916, ch. 453.

tance and succession from his natural parents remain unaffected by such adoption. The foster parent or parents and the person adopted sustain toward each other the legal relation of parent and child, and have all the rights and are subject to all the duties of that relation, including the right of inheritance from each other, except as the same is affected by the provisions in this section in relation to adoption by a stepfather or stepmother, and such right of inheritance extends to the heirs and next of kin of the person adopted, and such heirs and next of kin shall be the same as if he were the legitimate child of the person adopting, but as respects the passing and limitation over of real or personal property dependent under the provisions of any instrument on the foster parent dying without heirs, the person adopted is not deemed the child of the foster parent so as to defeat the rights of remaindermen. (*Amended by L. 1915, ch. 352, and L. 1916, ch. 453, in effect May 29, 1916.*)

§ 115. **Adoption from charitable institutions.**—An orphan asylum or charitable institution, incorporated for the care of orphan, friendless or destitute children may place children for adoption and the adoption of every such child, shall, when practicable, be given to persons of the same religious faith as the parents of such child. The adoption shall be effected by the execution of an instrument containing substantially the same provisions as the instrument provided in this article for voluntary adoption, signed and sealed in the corporate name of such corporation by the officer or officers authorized by the directors thereof to sign the corporate name to such instruments, and signed by the foster parent or parents and each person whose consent is necessary to the adoption; and may be signed by the child, if over twelve years of age; all of whom shall appear before the county judge or surrogate of the county where such foster parents reside or, if such foster parents do not reside in this state, in the county where the minor resides, and be examined, except that such officers need not appear; and such judge or surrogate may thereupon make the order of adoption provided by this article. Such instrument and order shall be filed and recorded in the office of the county clerk of the county where the foster parent resides and the adoption shall take effect from the time of such filing and recording. (*Amended by L. 1916, ch. 453, in effect May 29, 1916.*)

DOWER.

Who bound by judgment, see Judgment.

DRAINAGE LAW.

(L. 1909, ch. 20.)

§ 36. Method of payment in case of annual assessments.

Mandamus.—Where on an application for a writ of mandamus an allegation by the petitioners that they have been duly appointed drainage commissioners is put in issue by a positive denial, the County Court has no authority to issue a peremp-

tory writ. *People ex rel. Dumphy v. Chaney* (1916), 171 App. Div. 303, 156 N. Y. Supp. 1035.

The provisions of this section that "the court in which the proceeding is pending shall have jurisdiction, by mandamus, upon the petition of any party aggrieved to enforce the prompt compliance of any of the provisions of this section on the part of any officials charged therewith," is limited by said section to the enforcement of the rights established thereby, and, hence, does not give the County Court jurisdiction to grant a peremptory writ of mandamus to compel a supervisor to issue and sell bonds under sections 15 and 16. *People ex rel. Dumphy v. Chaney* (1916), 171 App. Div. 303, 156 N. Y. Supp. 1035.

EDUCATION LAW.

(L. 1909, ch. 21; L. 1910, ch. 140.)

§ 59. Charters.

This section was intended mainly for the incorporation of colleges, seminaries and institutions designed for the promotion of higher education, and was not intended to apply to primary schools or to homes for orphans or other charitable institutions in which some of the elementary branches of education may be taught. Atty. Genl. Opin., 5 State Dep. Rep. 456 (1915).

§ 123. Alteration of school districts by consent.

The consent of a board of education to the alteration of the boundaries of a district may only be given by a written instrument duly signed by a majority of the members of the board, or if signed by the president of the board, it must affirmatively appear that he was authorized to sign such consent by resolution of the board adopted by a majority vote thereof. Com. of Educ. Decision, 5 State Dep. Rep. 619 (1915).

§ 124. Alteration of school districts without consent.

Application.—This section and section 125 do not relate to an order of a district superintendent dissolving a school district and annexing its territory to an adjoining district. They apply only when it is proposed to alter the boundaries of a district by transferring portions thereof. Com. of Educ. Decision, 6 State Dep. Rep. 553 (1915).

§ 128. Dissolution of school districts by consent.

There must be a strict compliance with the requirements of the statute where it is sought to dissolve a district with the consent of the trustees. Com. of Educ. Decision, 5 State Dep. Rep. 636 (1915).

§ 129. Dissolution, reformation, and consolidation of school districts.

Broad powers are conferred upon the district superintendent by this section. He may dissolve any of the school districts under his supervision and from the territory of such dissolved districts erect new districts and make such disposition of the territory as in his judgment is most desirable. Com. of Educ. Decision, 4 State Dep. Rep. 614 (1915).

There is a presumption in favor of the reasonableness and sufficiency of an order altering the boundaries of a school district, which, after due opportunity for a hearing, has been duly ratified by a board consisting of the district superintendent and the supervisor and town clerk of the town in which the districts are situated. Com. of Educ. Decision, 6 State Dep. Rep. 557 (1915).

The rule that the boundaries of a district should not be altered for the sole purpose of equalizing tax rates, does not apply where it is sought to transfer from one district to another, territory which should naturally be included within the latter district. Com. of Educ. Decision, 6 State Dep. Rep. 557 (1915).

Notice to trustees of the dissolved districts, is not required by statute. Com. of Educ. Decision, 5 State Dep. Rep. 585 (1915).

Failure to obtain the consent of the trustee of the dissolved district does not render an order by the district superintendent dissolving a district, illegal. Com. of Educ. Decision, 6 State Dep. Rep. 553 (1915).

The burden rests upon the appellant to show that an order of the district superintendent dissolving a district, fails to advance the school welfare of the children of the dissolved districts. Com. of Educ. Decision, 5 State Dep. Rep. 585, 587 (1915).

§ 132. Proceedings at meeting for consolidation.

Construction.—This section must be construed as restricting the power of a meeting to adopt a resolution of consolidation if the required number of qualified electors from each district are not present. But it does not restrict or limit the power of the meeting to organize or to take any other necessary action in the absence of qualified electors from either of the districts. Com. of Educ. Decision, 4 State Dep. Rep. 644 (1915).

Adjournment of a meeting may be taken to a subsequent date to obtain the presence of a sufficient number of qualified electors. Com. of Educ. Decision, 4 State Dep. Rep. 644 (1915).

Appeal; presumption in favor of consolidation.—When a substantial majority of the qualified electors of each of the districts sought to be consolidated, vote in favor thereof, a presumption exists that the educational welfare of the community will be thereby promoted and such consolidation will not be disturbed on appeal in the absence of convincing proof to the contrary. Com. of Educ. Decision, 4 State Dep. Rep. 644 (1915).

§ 142. Posting, publication and service of notice.

Failure to post notices as required by this section will not invalidate a resolution for the establishment of a Union Free School district, where the resolution was favored by a substantial majority of the qualified electors of the district, and where there is nothing indicating that the failure to post such notice was fraudulent or with any purpose of taking unfair advantage of those opposed to the resolution. Com. of Educ. Decision, 4 State Dep. Rep. 642 (1915).

§ 143. Notice in case of adjoining districts.

Application.—The provisions of this section as to notice of meeting relate to the establishment of a Union Free School District, and have no bearing upon proceedings relating to the dissolution and consolidation of school districts. Com. of Educ. Decision, 4 State Dep. Rep. 614 (1915).

§ 193. Notice of annual district meeting.

Publication of notice of annual meeting in Union Free School district. Com. of Educ. Decision, 5 State Dep. Rep. 643 (1915).

§ 200. Effect of want of due notice of district meeting.

Application.—This section applies to all meetings, whether special or annual, held in all school districts, and to notices given either by posting, personal service or publication. Com. of Educ. Decision, 5 State Dep. Rep. 643 (1915).

The intent of this section is to prevent the nullification of proceedings at district meetings where failure of notice was not intentional, and the qualified electors of the district were not unfairly deprived of the opportunity of participating therein. Com. of Educ. Decision, 5 State Dep. Rep. 643 (1915).

Failure to post notices, as required by section 142, will not invalidate a resolution for the establishment of a Union Free School district, where the resolution was favored by a substantial majority of the qualified electors of the district, and where there is nothing indicating that the failure to post such notice was fraudulent or with any purpose of taking unfair advantage of those opposed to the resolution. Com. of Educ. Decision, 4 State Dep. Rep. 642 (1915).

§§ 203, 227, 250, 310, 313.

Duties of district clerk.

L. 1916, ch. 314.

§ 203. Qualification of voters at district meeting.

The burden of proving disqualification of an elector at a school meeting is upon the person who asserts it, and is not shifted to the alleged illegal voter, until specific facts are presented from which it may be inferred that such voter did not possess the necessary qualifications. Com. of Educ. Decision, 6 State Dep. Rep. 508 (1915).

The extension of the time for voting until 9 o'clock, although not technically authorized by law, is not a ground for setting aside a meeting where it did not affect the result. Com. of Educ. Decision, 6 State Dep. Rep. 508 (1915).

Setting aside election.—An election of a trustee or other school officer may not be set aside on the sole ground that persons voted for such officer who had no right to vote. In order to set aside an election, it must appear affirmatively that a sufficient number of illegal votes were cast for the successful candidate to affect the result. Com. of Educ. Decision, 6 State Dep. Rep. 506 (1915).

§ 227. Election of school district officers.

Validity of election; casting of ballot by clerk on motion.—This section requires the election of school officers by votes cast by the qualified electors present and voting at the meeting. The casting of a ballot by the clerk of the meeting as directed by a motion adopted by vote of the qualified electors present, does not constitute the election of a district officer by ballot. Com. of Educ. Decision, 6 State Dep. Rep. 594 (1915).

Any election of a school officer otherwise than by the votes of the qualified electors present is irregular and must be set aside in every case where the rights of electors opposing the candidacy of the candidate who was declared elected are thereby prejudiced in any manner or to any extent. Com. of Educ. Decision, 6 State Dep. Rep. 594 (1915).

Appeal; when voter precluded from questioning validity of election.—The failure of a voter to participate in the election of trustee and to offer challenges where she deemed the persons to be disqualified, precludes her from questioning the validity of election upon appeal. Com. of Educ. Decision, 6 State Dep. Rep. 515 (1915).

§ 250. Duties of district clerk.—*Subd. 11, added by L. 1916, ch. 314, in effect Apr. 25, 1916, as follows:*

11. To immediately notify the county treasurer of the name and address of persons elected to the office of district treasurer, if a treasurer is elected, and of the district collector.

§ 310. Powers and duties of boards of education.

Power to increase compensation of teachers.—A board of education may not, by voluntary act, without special cause, increase the compensation to be paid to teachers under contracts made by their predecessors in office. A board of education may increase by supplementary contracts the compensation to be paid teachers under contracts originally made by a former board. Com. of Educ. Decision, State Dep. Rep., Adv. Sheet No. 38, p. 89 (1915).

§ 313. Regular meetings.

Exclusion of public from meetings.—Under this provision, all meetings of a board of education must be public, except where the board determines, as the occasion requires, that public interests require that such meetings or parts thereof be executive. The law may not be complied with by a resolution or by-law that the public be excluded from stated meetings of the board. Com. of Educ. Decision, 6 State Dep. Rep. 517 (1915).

L. 1916, ch. 238.

Supervisory districts; school directors.

§§ 381, 382.

The public may not be excluded from meetings of the board of education, except where it is determined by the official act of a majority of the board that the particular business to be transacted at a particular meeting is of such a nature that it should be considered in executive session. Com. of Educ. Decision, 6 State Dep. Rep. 517 (1915).

§ 381. *Supervisory districts.*—*Subd. 6 added by L. 1916, ch. 238, in effect Apr. 17, 1916, as follows:*

6. The district superintendents of two or more supervisory districts in a county may unite in a petition to the board of supervisors of the county for a change in the boundaries of such districts by including or excluding one or more towns, stating the reasons for such change, and if such change conforms to the territorial requirements of subdivision one of this section, the board of supervisors may, by resolution, change such districts in accordance with such petition. A copy of such resolution, certified by the chairman and clerk of the board of supervisors, shall be deposited by the clerk in the office of the clerk of the county. The county clerk on receipt of the same shall forward a certified copy thereof to the commissioner of education.

§ 382. *School directors.*—1. Two school directors shall be elected for each town at the general election held in the year nineteen hundred and ten. One of such directors shall be elected to serve until January one, nineteen hundred and thirteen, and the other shall be elected to serve until January one, nineteen hundred and sixteen. A director shall be elected at the general election in nineteen hundred and twelve and every fifth year thereafter and one shall be elected in nineteen hundred and fifteen and every fifth year thereafter. The term of office of the directors elected in nineteen hundred and twelve and thereafter shall commence on the first day of January following their election and continue for five years. In towns, except those towns situated in the counties of Nassau and Suffolk, where biennial town meetings are held at a time other than the general election, directors shall be elected at the biennial town meeting held immediately prior to the expiration of the term of their predecessors. Such directors shall be elected in the same manner that town officers are elected at town meetings held at the time of a general election, and the provisions of the election law relating to the nomination and election of such town officers shall apply to the nomination and election of such directors.

2. A school director shall vacate his office by removal from the town or by filing a written resignation with the town clerk. A vacancy in the office of school director shall be filled by the town board of the town in which such vacancy exists, for the remainder of the unexpired term. If the town fails to elect a director a vacancy shall be deemed to exist in such office.

3. A school director before entering upon the discharge of the duties of his office, and not later than thirty days after the date on which he was elected to office, shall take the oath of office prescribed by the constitution.

§§ 388, 411, 412, 414, 440. Assessment for school purposes.

L. 1916, ch. 407.

Such oath may be taken before a justice of the peace or a notary public, and must be filed in the office of the clerk of the town.

4. A school director shall receive two dollars per day for each day's service and his necessary traveling expenses, and the town board of the town for which such director is chosen shall audit and allow the same. (*Amended by L. 1910, ch. 607, and L. 1916, ch. 168, in effect Apr. 7, 1916.*)

§ 388. Filling vacancy in the office of district superintendent.

Vacancies in the office of school director may be filled by the Town Board, in accordance with section 130 of the Town Law. Atty. Genl. Opin., 6 State Dep. Rep. 425 (1915).

§ 411. School taxes; property to be assessed.

No land can be assessed as land lying in one body which does not meet fully the following conditions: (1) such lands must lie in one body; (2) they must be owned by one person; (3) they must be occupied by one person and this person must be either the owner of such lands or the agent or tenant of such owner; (4) such lands must have been assessed as one lot on the last assessment roll of the town, after the revision by the assessors. Com. of Educ. Decision, 5 State Dep. Rep. 616 (1915).

§ 412. Ascertainment of valuations.

Assessments by town assessors.—The provisions of the statute do not authorize the trustees of a school district to substitute their judgment as to the descriptions and valuations of taxable real property for that of the town assessors. Omissions or errors by the town assessors may be supplied or corrected by trustees of school districts, but the statute does not contemplate that the power of the trustees to assess property shall be equal or superior to that of the town assessors. Opinion of Commissioner of Education (1916), State Dept. Reports, Adv. Sheet No. 42, p. 119.

§ 414. Equalization within joint districts.

A petition on appeal from an equalization of valuations for assessment in joint school districts must contain specific and detailed allegations of unequal valuations, so that at least a *prima facie* case of erroneous determination is presented. Copies of the petition must be served upon the supervisors comprising the board of equalization. Opinion of Commissioner of Education (1916), State Dept. Reports, Adv. Sheet No. 42, p. 117.

§ 440. Assessment for school purposes of certain state lands.

Subd. 2, as amended by L. 1911, ch. 593, and L. 1915, ch. 125, amended by L. 1916, ch. 407, in effect May 3, 1916, as follows:

2. The local school authorities of union free school district number two of the town of Wawarsing, Ulster county, districts number six and eight of the town of Dover and districts number one and two of the town of Beekman, Dutchess county, all the school districts in the towns of Highlands, Woodbury and Tuxedo, Orange county, union free school district number one of the town of Ossining in the county of Westchester, and of school districts in the county of Rockland shall hereafter assess the lands owned by the state of New York and situate within the boundaries of said districts, exclusive of the improvements, if any, erected thereon by the

state, at the same valuation as similar lands of individuals in said districts are assessed and the comptroller shall hereafter credit to the treasurer of the county wherein such lands are situated the amount of taxes levied upon the lands of the state therein for school purposes from taxes payable by said county treasurer each year to the state for state taxes levied and assessed upon the taxable property of the towns in which such districts are located and upon the adjustment of such taxes so made, the said county treasurer shall pay to the collector of taxes of the school districts in which such lands are situated the amount of such taxes as allowed and so paid by the state.

§ 456. Condemnation of schoolhouse.

A presumption exists in favor of the validity of an order for the condemnation of a schoolhouse which may only be overcome by a preponderance of proof. Com. of Educ. Decision, 6 State Dep. Rep. 477 (1915).

§ 467. School taxes and school bonds.

Authority of district meeting to direct erection of new schoolhouse.—Com. of Educ. Decision, 5 State Dep. Rep. 608 (1915).

§ 490. School moneys; when apportioned and how applied.

High schools are a part of the common school system of the State, and money appropriated for the support of common schools may be legally used for the support of high schools. Hence, the Board of Education of the city of New York is not required to apply all public moneys for the support of common schools in the city to the payment of salaries of teachers in the elementary schools. Opinion of Commissioner of Education (1916), State Dept. Reports, Adv. Sheet No. 42, p. 122.

§ 563. Contract when teacher is related to trustee or member of board.

Relationship of teacher to trustee.—Since the law does not specify any degree of relationship, a contract is not binding upon the district without the required approval, although the relationship of the teacher to the trustee is remote. Com. of Educ. Decision, 6 State Dep. Rep. 513 (1915).

There is a presumption in favor of the accuracy of the minutes of a school meeting, showing consent to the employment of the daughter of a trustee as teacher. Com. of Educ. Decision, State Dep. Rep., Adv. Sheet No. 38, p. 101 (1915).

Notice given by posting of a meeting called pursuant to this section held sufficient, although the notices were subsequently changed by inserting therein a different date. Com. of Educ. Decision, 5 State Dep. Rep. 583 (1915).

§ 565. Dismissal of teacher.

There is a presumption that a teacher who has been licensed is competent to teach, and the termination of a contract by the arbitrary act of the trustee will not be sustained without positive proof. Com. of Educ. Decision, 6 State Dep. Rep. 531 (1915).

A license to teach should be annulled only when it clearly appears that the teacher is generally incompetent or unfit to be placed in charge of pupils. Com. of Educ. Decision, 6 State Dep. Rep. 609 (1915).

The continued failure of a teacher to maintain good order in a school room, showing such a lack of discipline as to materially lessen the efficiency of the school,

§§ 567, 571.

Employment of medical inspectors.

L. 1916, ch. 182.

constitutes sufficient cause for dismissal. Com. of Educ. Decision, 6 State Dep. Rep. 531 (1915).

§ 567. Common school free to resident pupil.

Application of section.—5 State Dep. Rep. 639 (1915).

A tax for the "support of the schools" maintained in the city or district, within the meaning of subdivision 3, includes a tax paid for the erection of a new school building. Com. of Educ. Decision, State Dep. Rep., Adv. Sheet No. 38, p. 92 (1915).

Children placed by the poor authorities to board with a family in a certain school district, their parents having deserted them, and they having no other home, are entitled to school privileges therein, without the payment of tuition. Matter of Greeley. Opinion of Commissioner of Education (1916), State Dept. Reports, Adv. Sheet 41, p. 116.

§ 571. Employment of medical inspectors.—The board of education in each city and union free school district, and the trustee or board of trustees of a common school district, shall employ, at a compensation to be agreed upon by the parties, a competent physician as a medical inspector, to make inspections of pupils attending the public schools in the city or district. If appointed by a board of education of a city such physician shall reside within the city. The physicians so employed shall be legally qualified to practice medicine in this state, and shall have so practiced for a period of at least two years immediately prior to such employment. Any such board or trustees may employ one or more school nurses, who shall be registered trained nurses and authorized to practice as such. Such nurses when so employed shall aid the medical inspector of the district and shall perform such duties for the benefit of the public schools as may be prescribed by such inspector.

A medical inspector or school nurse may be employed by the trustees or boards of education of two or more school districts, and the compensation of such inspector, and the expenses incurred in making inspections of pupils as provided herein, shall be borne jointly by such districts, and be apportioned among them according to the assessed valuation of the taxable property therein.

In cities and union free school districts having more than five thousand inhabitants, the board of education may employ such additional medical inspectors as may be necessary to properly inspect the pupils in the school in such cities and union free school district.

The trustees of a common school district or the board of education of a union free school district whose boundaries are coterminous with the boundaries of an incorporated village shall, in the employment of medical inspectors, employ the health officer of the town in which such common school district is located or the health officer of such union free school district, so far as may be advantageous to the interests of such district. (*Added by L. 1913, ch. 627, and amended by L. 1916, ch. 182, in effect Apr. 11, 1916.*)

ARTICLE 26-A.

(Added by L. 1916, ch. 567, in effect May 15, 1916.)

DISCIPLINE AND PHYSICAL TRAINING.

Section 695. Instruction in physical training and kindred subjects.

696. Rules of regents.

697. State aid for teachers employed.

§ 695. Instruction in physical training and kindred subjects.—After the first day of September, nineteen hundred and sixteen, all male and female pupils above the age of eight years in all elementary and secondary schools shall receive as part of the prescribed courses of instruction therein such physical training as the regents after conference with the military training commission may determine, during periods which shall average at least twenty minutes in each school day. Pupils above such age attending the public schools shall be required to attend upon such prescribed courses of instruction. The boards of education and trustees of the several cities and school districts in the state shall require the prescribed instruction to be given in such courses, within such cities and districts respectively, under the direction of the commissioner of education and in accordance with rules of the regents. Such boards of education or trustees, when the number of pupils in the city or district required to attend upon such instruction is sufficient, shall employ a competent teacher or teachers to give such instruction. The trustees or boards of education of two or more contiguous districts in the same supervisory district, when authorized or directed by the commissioner of education, may join in the employment of a competent teacher to give such instruction; and the salary of such teacher and the expenses incurred on account of such instruction shall be apportioned by the district superintendent among such districts according to the assessed valuation thereof, and as so apportioned shall be a charge upon each of such districts. Similar courses of instruction shall be prescribed and maintained in private schools in the state, and all pupils in such schools over eight years of age shall attend upon such courses; and if such courses are not so established and maintained in any private school, attendance upon instruction in such school shall not be deemed substantially equivalent to instruction given to children of like ages in the public school or schools of the city or district in which the child resides.

Whenever the regents shall adopt recommendations of the military training commission in relation to the establishment in elementary and secondary schools of habits, customs and methods adapted to the development of correct physical posture and bearing, mental and physical alertness, self-control, disciplined initiative, sense of duty and spirit of co-operation under leadership, as provided in the military law, the regents shall prescribe and enforce such rules as may be necessary to carry into effect the recommendations so adopted. (*Added by L. 1916, ch. 567, in effect May 15, 1916.*)

§ 696. **Rules of regents.**—It shall be the duty of the regents to adopt rules determining the subjects to be included in courses of physical training provided for in this article, the period of instruction in each of such courses, the qualifications of teachers, the attendance upon such courses of instruction, and relating to carrying out the recommendations of the military training commission when adopted by the regents as provided for in this article. (*Added by L. 1916, ch. 567, in effect May 15, 1916.*)

§ 697. **State aid for teachers employed.**—The commissioner of education, in the annual apportionment of state school moneys, shall apportion therefrom to each city and school district on account of courses of instruction as provided in this article, established and maintained in the schools of such city or district during the school year or any part thereof, a sum equal to one-half of the salary paid to each teacher on account of instruction given in such courses, but the entire amount apportioned on account of a single teacher during a school year shall not exceed six hundred dollars. Such apportionments shall be made out of moneys to be appropriated therefor, subject to the provisions of law relative to apportionments of public money to the public schools of the state. Such apportionments shall not be made unless such courses of instruction shall be approved by the commissioner of education and the instruction therein shall meet the standards prescribed and conform to the provisions of this article and the rules of the regents of the university in respect thereto. If two or more districts shall jointly maintain such courses of instruction, the commissioner of education shall apportion a like amount on account of the salary paid to the teacher, which shall be apportioned to the school districts in accordance with the amount required to be paid by each district for the maintenance of such courses of instruction. (*Added by L. 1916, ch. 567, in effect May 15, 1916.*)

§ 750. **Arbor day.**—The commissioner of education shall designate by proclamation, annually, the day to be observed as Arbor day. (*Amended by L. 1916, ch. 220, in effect Apr. 17, 1916.*)

§ 834. **Contracts for the education of children, residing in a city or district, in which a state normal school is located.**—The commissioner of education is authorized to enter into a contract with the board of education of a city or district in which a state normal school is located for the education by the state, for such period of time as may be agreed upon, of all or part of the children of legal school age residing in such city or school district. Before such contract becomes binding, it must be approved by the board of regents. Such contract must be executed in duplicate and one contract filed with the commissioner of education and the other with the state comptroller. A board of education in such a city or district is hereby authorized and empowered to enter into such contracts with the said commissioner of education and to perform all necessary acts to carry

out the purposes of this act. (*Added by L. 1916, ch. 315, in effect Apr. 25, 1916.*)

§ 858. Costs, expenses and damages a district charge in certain cases.

Expenses of litigation between trustees.—Where, without the consent of the defendant trustee, an action for an injunction was brought by one claiming to be one of the three trustees of the school district, to which action one conceded to be a trustee was joined as a plaintiff against another trustee and one claiming to be a trustee and a teacher employed by him, to determine who was elected trustee at the annual meeting and who was legally employed to teach the school for the then ensuing school year, in which plaintiffs obtained a preliminary injunction restraining defendants from entering the school-house, etc., and by a decision of the Court of Appeals it was held that it was no case for an injunction, the services and expenses of the litigation were wholly unnecessary and can not form the basis of any just charge against the school district. The action not having been brought by all of the trustees of the school district did not affect any property, claim, rights or interest of the school district within the meaning of sections 858-862 of the Education Law. Neither were the plaintiffs in said action entitled to any relief under section 1931 of the Code of Civil Procedure. *Matter of Humphrey (1916), 94 Misc. 377, 157 N. Y. Supp. 807.*

§ 880. Appeals or petitions to commissioner of education and other proceedings.

The interest which a parent may have in the school of the district is not such as to authorize an appeal by him from the action of a board in unlawfully terminating a contract with a teacher. *Com. of Educ. Decision, 6 State Dep. Rep. 515 (1915).*

An appeal may be taken from the action of trustees of a school district "in paying or refusing to pay a teacher." *Com. of Educ. Decision, State Dep. Rep., Adv. Sheet No. 38, p. 89 (1915).*

Where the determination of an appeal involves the measure of damages for a breach of a contract to teach, which the appellant has been unable to enter upon and complete because of such breach, the remedy must be sought by action in the courts. *Com. of Educ. Decision, 6 State Dep. Rep. 536 (1915).*

Appeal should be brought.—The remedy provided by this section of an appeal to the commissioner of education by one believing himself aggrieved by the action of any school district meeting, is a very simple, expeditious and effective proceeding at an expense not exceeding twenty-five dollars, and it is the official duty of school trustees to serve their district in this economical manner rather than embark in litigation that results in their making a claim against the school district for the expense of such litigation. *Matter of Humphrey (1916), 94 Misc. 377, 157 N. Y. Supp. 807.*

§ 881. Power of commissioner upon appeals.

An application for a rehearing of an appeal where a decision has been made, should not be granted unless upon the ground of newly discovered evidence or unless it be clearly shown that the decision was rendered under a misapprehension of the meaning and effect of material evidence submitted upon the appeal. *Com. of Educ. Decision, State Dep. Rep., Adv. Sheet No. 38, p. 95 (1915).*

Filing and serving petition.—The rule regulating practice on appeals, requiring the petition to be served and filed within thirty days from the time when the act occurred from which the appeal is brought must be complied with, except where a sufficient excuse for delay is submitted. *Com. of Educ. Decision, 6 State Dep. Rep. 507 (1915).*

§§ 1060, 1078, 1093.

School for agriculture.

L. 1916, ch. 118.

Failure to serve papers within time.—An attempt to bring an appeal made within the time prescribed by the rules ought not to be rendered nugatory by failure to serve the papers within such time, where the appellants show a meritorious cause, and the delay has not in any way impaired the respondent's defense. *Com. of Educ. Decision, 6 State Dep. Rep. 533 (1915).*

§ 1060. Reports.—The board of control shall report to the commissioner of agriculture annually, on or before the first day of December, a detailed statement of all expenditures and of the general operations of the said school for the year ending the thirtieth day of June then next preceding; and a copy of such report shall be transmitted to the legislature. (*Added by L. 1913, ch. 675, and amended by L. 1916, ch. 118, § 33, in effect Apr. 3, 1916.*)

§ 1078. Powers and duties of board of trustees.—The board of trustees of such school shall have the general care, supervision and control of such school and of all of its affairs, and to carry out its objects and purposes shall:

1. Employ and at pleasure remove teachers, experts, chemists and all necessary clerks and assistants;
2. Adopt rules not inconsistent with law controlling the affairs of such school and regulating the meetings and organization of such board;
3. Prescribe the course of instruction and the methods of investigation and experiments to be followed in such school.

The board of trustees shall report to the commissioner of agriculture annually, on or before the first day of December, a detailed statement of such expenditures and of the general operations of the said school of agriculture for the year ending the thirtieth day of June then next preceding, and a copy of such report shall be transmitted to the legislature. Students, bona fide residents of the state of New York for one year preceding the date of their admission, shall be entitled to free tuition. Other fees and charges, if any, in the said school of agriculture, and any moneys received from tuition paid by students not residents of the state of New York, and from the sale of products, shall be reported and forwarded monthly to the state treasurer as required by the state finance law. (*Added by L. 1911, ch. 852, and amended by L. 1916, ch. 118, § 34, in effect Apr. 3, 1916.*)

§ 1093. Powers and duties of board of trustees.—The board of trustees so appointed by the governor shall have the general care, supervision and control of such school and all its affairs and to carry out its objects and purposes:

1. Employ and remove teachers, experts, chemists and all necessary clerks and assistants.
2. Adopt rules not inconsistent with the law controlling the affairs of such school.
3. Prescribe the course of instruction and the methods of investigation and experiments to be followed in such school.

The board of trustees shall report to the commissioner of agriculture annually, on or before the first day of December, a detailed statement of such expenditures and of the general operations of the said school of agriculture for the year ending the thirtieth day of June then next preceding, and a copy of such report shall be transmitted to the legislature. Students bona fide residents of the state of New York for one year preceding the date of their admission shall be entitled to free tuition. Other fees and charges, if any, in the said school of agriculture, and any moneys received from tuition paid by students not residents of the state of New York, and from the sale of products, shall be reported and forwarded monthly to the state treasurer as required by the state finance law. (*Amended by L. 1916, ch. 118, § 35, in effect Apr. 3, 1916.*)

§ 1109b. Application of article to certain counties, cities and districts.

Transfer of teachers in local association.—Upon consideration of the petition of more than two-thirds of the public school teachers of the city of Yonkers that they be admitted to the state teachers' retirement fund for public school teachers under article 43-B of the Education Law, added by chapter 449 of Laws of 1911, section 1109-b of which provides "that whenever the state teachers' retirement fund board is satisfied that more than two-thirds of all the teachers employed in the public schools of any . . . city . . . are willing to become subject to this article, as shown by a petition duly signed and verified by such teachers, such board shall issue its order directing that on and after the date thereof this article shall apply to such . . . city," the state teachers' retirement fund board made an order that said article 43-B of the Education Law should apply to the city of Yonkers and made a demand upon the custodian of the fund held by the trustees of the Yonkers Public School Teachers' Retirement Fund Association for the payment over of the moneys, which demand was refused. On granting a peremptory writ of mandamus for a transfer of the fund, held, that said fund was a public one made up as provided by law from contributions, one per cent of teachers' salaries, and five per cent of all excise moneys, together with forfeitures and deductions, and that the members of the local association had no vested right therein. *Matter of Bristol (1916), 93 Misc. 626, 158 N. Y. Supp. 503, Affd—App. Div.—.*

§ 1182. Supreme court library; Riverhead.—The supreme court law library at Riverhead, New York, in and for the second judicial district, shall be under the care and management of a board of three trustees who shall be members of the Suffolk county bar and who shall be selected by the justice of the supreme court residing in Suffolk county. Such trustees shall have power to receive by gift, devise or bequest any property given or conveyed for the purpose of a law library. The foundation of such law library shall be the law books and other library property now belonging to the Suffolk county bar association when the same shall be conveyed to such trustees by such bar association. It shall be the duty of such trustees to hold and manage the property of such library and to make rules and regulations for the management and protection of the same, and to prescribe penalties for the violation thereof. They may sue for and recover such penalties and maintain actions for any injury to such library or its property. They may procure proper furnishings, provide rooms,

§ 1182.

Supreme court library; Riverhead.

L. 1916, ch. 231.

fuel and lights for such library and defray all incidental expenses for the care and management of same as well as the salary of a librarian. The amounts required therefor shall be paid by the treasurer of the county of Suffolk upon the certificate of a resident justice of the supreme court of the second judicial district, out of the moneys raised in such county for court expenses, which amounts shall be a county charge upon such county of Suffolk. The librarian shall be appointed by such board of trustees and shall hold office during their pleasure. Such trustees shall fix the salary of such librarian, which shall not exceed six hundred dollars per annum, and such salary shall be paid in equal monthly payments. (*Added by L. 1916, ch. 231, in effect Apr. 17, 1916.*)

ELECTION LAW.

(L. 1909, ch. 22.)

§ 3. **Definitions.**—The terms used in this chapter shall have the significance herein defined unless other meaning is clearly apparent in language or context;

1. The term “general election” means the election held on the Tuesday next succeeding the first Monday in November.

2. The term “official primary” or “official primary election” means a primary election held by a party for the purpose of nominating candidates for office or, electing persons to party positions and conducted by the public officers charged by law with the duty of conducting general elections. An “unofficial primary” or “unofficial primary election” means any other primary or primary election held by a party or independent body.

3. The term “primary day” means the day upon which an official primary election is held, as in this chapter provided.

4. The term “fall primary” means the official primary election held on the seventh Tuesday before the general election.

5. The term “spring primary” means the official primary election held on the first Tuesday in April in years when a president of the United States is to be elected.

6. The term “unit of representation” means any election district, town, ward of a city, assembly district, or any other political subdivision of the state, respectively, which is the unit from which members of any political committee or delegates to a party convention shall be elected as herein provided.

7. The term “custodian of primary records” means the officer or board whose duty it is by the provisions of this chapter to provide official ballots for general elections.

8. The term “board of elections” shall include a single commissioner of elections in a county having such an officer and the county clerk in any county which by the provisions of this chapter shall have no such board nor commissioner, except as otherwise provided in special provisions relating to any such county.

9. The term “party” means any political organization which at the last preceding election for governor polled at least ten thousand votes for governor.

10. The term “nomination” means the selection in accordance with the provisions of this chapter of a candidate for office authorized to be filled at a general election or at a special election held to fill a vacancy in such office.

§ 6. Voting booths and enrollment boxes. L. 1916, ch. 537.

11. The term "designation" means any method in accordance with the provisions of this chapter by which candidates for party nominations, or for election as party committeemen or delegates, may be named in order that they may be placed upon the official ballot for any official primary election.

12. The term "official primary ballot" means the ballot prepared, printed and supplied for use at an official primary election in accordance with the provisions of this chapter.

13. The term "party position" means membership in a party committee or the position of delegate or alternate to a national party convention.

14. The term "committee" means any committee chosen, in accordance with the provisions of this chapter, to represent the members of a party in any political subdivision of the state.

15. The term "independent body" means any organization or association of citizens which, by independent certificate, nominates candidates for office to be voted for at a general, special or village election, or town meeting, and which, if such independent body nominated a candidate for governor at the preceding general election of a governor, did not poll at least ten thousand votes for its candidate for such office.

16. The term "party nomination" means the selection by a party of a candidate for an office authorized to be filled at a general election, or at a special election held to fill a vacancy in such office, or at a town meeting.

17. The term "independent nomination" means the selection of a candidate by an independent body for an office authorized to be filled at a general election, or at a special election held to fill a vacancy in such office, or at a town meeting.

18. The term "party candidate" or "party nominee" means a person who is selected by a party to be its candidate for an office authorized to be filled at a general election, or at a special election held to fill a vacancy in such office, or at a town meeting.

19. The term "independent candidate" or "independent nominee" means a person who is selected by an independent body to be its candidate for an office authorized to be filled at a general election, or at a special election held to fill a vacancy in such office, or at a town meeting.

20. The term "enrollment books," when applied to those used in a city of over one million inhabitants, means registers of electors in which party enrollments of voters are entered or provided for in additional columns. (*Amended by L. 1911, ch. 649, renumbered and amended by L. 1911, ch. 891, amended by L. 1913, ch. 820, L. 1915, ch. 678, L. 1916, ch. 537, § 1, in effect May 15, 1916.*)

§ 6. Voting booths and enrollment boxes.—The custodian of primary records shall cause at least two voting booths of the same kind and description as voting booths used at general elections, to be erected in each place

of registration before the first day of registration in each year, and such booths shall be and remain in said places of registration during the registration at the regular meetings for registration during that year; and it shall be the duty of the custodian of primary records to furnish in each voting booth so erected the same articles as are required by law to be placed therein for a general election, which articles shall remain therein during such registration. He shall also provide in like manner one enrollment box in each place of registration of sufficient capacity to hold all the enrollment blanks which are to be furnished for such place of registration, which shall be similar to the ballot boxes prescribed by law to be used at a general election. He shall also in like manner provide at each polling place on general election day, in each election district wholly outside of a city or village having five thousand inhabitants or more, or partly within and partly outside of any such village, two such voting booths, for the enrollment of voters, the needed articles therefor, and an enrollment box, as above provided. (*Renumbered and amended by L. 1911, ch. 891, and amended by L. 1916, ch. 537, § 2, in effect May 15, 1916.*)

§ 7. **Enrollment blanks.**—There shall also be prepared by the custodian of primary records at public expense, to be borne in the same manner as the expense of furnishing official ballots, and delivered by such custodian with the enrollment books, such number of enrollment blanks for each election district as will exceed by seventy-five the total number of voters registered in such district. The enrollment blanks shall be printed on white paper, and on the face thereof shall be printed the following, or the substance thereof, the blanks to be filled in in type so far as possible: “Primary enrollment for the year..... city (or village or town) of.....; county of.....; assembly district (or ward or town); election district; enrollment number.....

Name of voter.....

“I,, who have placed a mark underneath the party emblem hereunder of my choice, do solemnly declare that I have this day registered as a voter for the next ensuing election, (or, if the voter was duly registered otherwise than personally, that ‘I have this day voted in the above election district’) and that I am a qualified voter of the election district in which I have so registered (or voted), and that my residence address is as stated by me at the time I so registered (or, if registration was not personal, a statement of the voter’s present address); that I am in general sympathy with the principles of the party which I have designated by my mark hereunder; that it is my intention to support generally at the next general election, state or national, the nominees of such party for state or national offices, and that I have not enrolled with or participated in any primary election or convention of any other party since the first day of last January. The word ‘party’

§ 8. Delivery of enrollment blanks. L. 1916, ch. 537.

as used herein means a political organization which at the last preceding election of a governor, polled at least ten thousand votes for governor.

..... Party

(Insert emblem.)

..... Party.

(Insert emblem.)

“Make a cross X mark, with a pencil having black lead, in the circle under the emblem of the party with which you wish to enroll, for the purpose of participating in its primary elections during the next year.”

The circles underneath the emblem shall be three-quarters of an inch in diameter, and in them nothing shall be printed. The party emblems shall be the same as those which were on the ballots for each party respectively at the last preceding general election, and such emblems shall be so arranged on each blank that the emblem of the majority party at the last preceding general election of a governor shall be first, and the other emblems shall follow in order in accordance with the vote cast for such office at such election; over each emblem shall be printed, in type clearly legible, the name of the party represented by such emblem. The enrollment blanks shall have thereon only the emblems of those parties to which this article is applicable. (*Renumbered and amended by L. 1911, ch. 891, and amended by L. 1913, ch. 820, and L. 1916, ch. 537, § 3, in effect May 15, 1916.*)

§ 8. Delivery of enrollment blanks to voters on days of registration.—When, in any political subdivision of the state, a voter shall, at any of the regular meetings for registration in any year, present himself personally to the board of election inspectors in any election district for registration, or if, where his registration was not required to be personal and he was registered without personal application, he shall present himself personally to such board for enrollment only, his name and residence address shall be entered at the proper place in the two original enrollment books for that district. After he shall have been registered, and not before, as a qualified voter of that election district for the next ensuing general election, the board of election inspectors, or a member thereof, shall forthwith and before such voter leaves the place of registration, enter his enrollment number, beginning with number one for the first voter enrolled on the first day, and so on in numerical order, opposite his name, in the first column of the registration books and the enrollment books, and shall write the name of the voter on the blank having the enrollment number which shall be opposite his name on the registration and enrollment books, and shall fill in the other blank spaces on the enrollment blank, and shall deliver to such voter an enrollment blank having his name on it. No voter shall be given more than two enrollment blanks in any event, nor more than one blank unless he shall spoil, deface, improperly mark, or otherwise destroy the first blank given him. In case a second blank is given him, the member of the board of election inspectors in charge of the enrollment books shall draw a line through such voter's enrollment number in the first

L. 1916, ch. 537.

Enrollment of voters.

§§ 9, 10.

column in said enrollment and registration books, and shall insert in such space in said columns the number which shall be upon the new blank to be given him, which number shall always be the lowest number of the enrollment blanks then unused in such election district. (*Renumbered and amended by L. 1911, ch. 891, and L. 1916, ch. 537, § 4, in effect May 15, 1916.*)

§ 9. **Delivery of enrollment blanks to voters on election day where registration is not personal.**—When, in any town or village in which personal registration is not required, or in an election district a part of which comprises territory in which such personal registration is not required, a registered voter whose registration was not personal nor required to be personal, and who was not enrolled on a day of registration, shall present himself to the board of election inspectors in an election district at a general election for the purpose of receiving an official ballot to be voted thereat, his name and residence address shall be entered at the proper place in the original enrollment books for that district. After he shall have voted, the board of election inspectors, or a member thereof, shall forthwith and before such voter leaves the polling place, write his name on the enrollment blank having the lowest number of the blanks then unused in such election district, shall fill in the other blank spaces on such enrollment blank, shall deliver to him an enrollment blank having his name on it and enter opposite his name in the first column of the registration and enrollment books the number on the blank delivered to him. No voter shall be given more than two blanks in any event, nor more than one blank unless he shall spoil, deface, improperly mark, or otherwise destroy the first blank given him. In case a second blank is given him, the member of the board of election inspectors in charge of the enrollment books shall draw a line through such voter's enrollment number in the first column in said registration and enrollment books, and shall insert in such space in such column the number which shall be upon the new set to be given him, which number shall also be the lowest number on the enrollment blanks then unused in such election district. Enrollment blanks shall be numbered consecutively, beginning with the one succeeding the last number used on the last preceding day of registration. (*Added by L. 1911, ch. 891, and amended by L. 1916, ch. 537, § 5, in effect May 15, 1916.*)

§ 10. **Enrollment by voters.**—Such voter desiring to enroll shall then enter a voting booth in said place of registration or polling place, and, after having closed the door thereof, may make a cross X mark with a pencil having black lead in the circle underneath the emblem of the party of his selection and thereupon fold said enrollment blank so as to conceal the face thereof, and, before leaving the place of registration or polling place, shall forthwith deposit the same, as so folded, in the enrollment box in said place of registration or polling place in the presence of the inspec-

§§ 11, 12.

Enrollment on day of registration.

L. 1916, ch. 537.

tors of election, without in any way indicating the party with which he has or has not enrolled, and the inspectors shall thereupon enter in the enrollment books in the fifth column thereof the word "yes." If a voter declines to enroll, he may return the blank to the inspector in charge of the enrollment box, and such inspector shall indorse the name of such voter thereon and deposit the same in the enrollment box; and a like entry shall be made opposite his name in the fifth column of the enrollment books. The entries in the enrollment and registration books required by this and the two preceding sections shall be made by a member of the board designated by the chairman.

One mark crossing any other mark at any angle within the circle shall be deemed a cross mark within the meaning of this article. (*Amended by L. 1911, ch. 891, and L. 1916, ch. 537, § 6, in effect May 15, 1916.*)

§ 11. Examination, sealing and custody of enrollment boxes.—Before the entry of any enrollment number or the delivery of an enrollment blank to any voter, in any year, the said enrollment box shall be examined by the board of election inspectors and when empty shall be locked and sealed by them in such a manner that should it be opened such seal would be broken; and the same shall remain so locked and sealed until the same shall be opened by the custodian of primary records as hereinafter provided. Said boxes shall be in the charge and keeping of the custodian of primary records at all times except during hours of enrollment. (*Renumbered and amended by L. 1911, ch. 891, and amended by L. 1916, ch. 537, § 7, in effect May 15, 1916.*)

§ 12. Certification and secrecy of enrollment occurring on a day of registration.—1. Except as otherwise provided in subdivision two hereof, at the close of the last meeting for registration in each year the board of election inspectors shall severally subscribe and verify duplicate declarations, one of which shall be printed in or attached to each of the original enrollment books. Such declarations shall be to the effect that the persons shown by such enrollment books are the only persons who registered personally as voters in that district on any of said days of registration or who, having been registered on any of said days without personal application, thereafter applied for and received enrollment blanks, and such declarations shall set forth the number of the last enrollment blank used on such last day of registration. Immediately upon the close of each day of registration, and before leaving the meeting place, the board of election inspectors shall publicly inclose the said enrollment books, together with all records pertaining thereto, in a sealed envelope, upon which shall be written or printed in distinct characters the number of the election district. Such envelope shall remain in the custody of the chairman of the board until the meeting on the next day of registration, when it shall be publicly opened. The envelope sealed at the close of the last day of registration shall, within twenty-four hours thereafter, be delivered to

L. 1916, ch. 537.

Enrollment on election day; completion.

§§ 13, 14.

the custodian of primary records. Such envelope shall remain sealed until the next Tuesday following the next ensuing day of general election, except that in any election district in which personal registration is not required or comprising territory in a portion of which personal registration is not required such envelope shall be returned to the board of inspectors before the opening of the polls on the day of general election, to be by them opened and used and again delivered to the custodian of primary records as prescribed in section thirteen. No member of the board of election inspectors shall make, or allow to be made, a copy of, or a transcript or statement from, the enrollment books.

2. In a city of over one million inhabitants, at the close of the last meeting for registration in each year the board of election inspectors shall severally subscribe and verify four declarations, one of which shall be printed in or attached to each of the original registers. Such declarations shall be to the effect that the persons shown by such registers are the only persons who registered personally as voters in that district on any of said days of registration and shall set forth the number of the last enrollment blank used on such last day of registration. (*Renumbered and amended by L. 1911, ch. 891, and amended by L. 1915, ch. 678, and L. 1916, ch. 537, § 8, in effect May 15, 1916.*)

§ 13. **Certification and secrecy of enrollment occurring on the day of general election.**—At the close of the day of general election or on the following day in each year, in an election district in which the enrollment of any voters is permitted under this article on the day of such election, the board of election inspectors shall severally subscribe and verify duplicate declarations one of which shall be printed on and attached to each of the original enrollment books. Such declarations shall be to the effect that the persons shown by such enrollment books whose enrollment number is higher than the last number used on the last preceding day of registration, constitute all of the persons voting in that district at such general election whose registration was not personal and who had not, after such registration, applied for enrollment on a day of registration. They shall inclose such enrollment books, together with all records pertaining thereto, in a sealed envelope, upon which shall be written or printed in distinct characters the number of the election district, and shall within forty-eight hours after the close of such general election deliver the same to the custodian of primary records. Such envelope shall remain sealed until the following Tuesday. No member of the board of election inspectors shall make, or allow to be made, a copy of or a transcript or statement from the enrollment books. (*Added by L. 1911, ch. 891, and amended by L. 1916, ch. 537, § 9, in effect May 15, 1916.*)

§ 14. **Opening of enrollment box and completion of enrollment.**—It shall be the duty of the board of inspectors, or one of them, at the close of the registration, and again at the close of a day of general election where

§§ 16, 19a.

Special enrollment.

L. 1916, ch. 537.

voters are enrolled on that day, to deliver the enrollment box to the custodian of primary records. All enrollment blanks contained therein shall remain in such box, and the said box shall not be opened nor shall any of the blanks be removed therefrom until the Tuesday following the day of general election in that year. Such box shall then be opened by the custodian of primary records, and the blanks contained therein shall be removed thereupon by said custodian, and the name of the party designated by each voter under such declaration shall be by said custodian entered against the name of such voter in the appropriate column of three registers, in a city having more than one million inhabitants, and of the enrollment books elsewhere for the election district in which such voter resides. Such enrollment shall be completed before the succeeding fifteenth day of February in each year. If cross marks are found in more than one of the circles, or if no cross marks are found in any of the circles of any enrollment blank, the voter who used the enrollment blank thus deficient shall not be deemed to be enrolled, and words indicating the reason why such enrollment is not transcribed shall be entered against the name of such voter in the register columns reserved for the entry of party enrollments, in any city of over one million inhabitants, and elsewhere in the sixth column of the enrollment books. When all of the enrollment shall be transcribed from the blanks to the enrollment books or registers, the custodian of primary records shall subscribe and verify identical declarations, one of which shall be printed in or attached to each of the said original enrollment books or registers, which declaration shall be to the effect that he has correctly and properly transcribed the enrollment indicated on the blank of each voter to the said enrollment books or registers, as herein provided. (*Renumbered and amended by L. 1911, ch. 891, and amended by L. 1915, ch. 678, and L. 1916, ch. 537, § 10, in effect May 15, 1916.*)

§ 16. **Duplicate enrollment books.**—The custodian of primary records shall annually provide a true copy, duly certified, for the state superintendent of elections and for each party of so much of the said enrollment books as will give the names, addresses and political affiliation of each voter. The said custodian shall, in the month of February each year, deliver one such certified copy to the state superintendent of elections and the chairman of the proper county committee of each such party. Such certified copies shall conform in all respects to the form of the original enrollment books, or to the portion transcribed, as the case may be. The custodian of primary records shall certify to such chairman that each such copy is a correct transcript from the original enrollment book, made during the days of registration of voters for or at the preceding general election. (*Renumbered and amended by L. 1911, ch. 891, and amended by L. 1913, ch. 820 and L. 1916, ch. 537, § 11, in effect May 15, 1916.*)

§ 19-a. **Special enrollment after moving.**—If, after being enrolled as a member of a party in one election district, by original enrollment, a voter

shall move into another election district in the same assembly district, he may, at any time between the first day of February of any year and the thirtieth day before the annual primary day, become enrolled therein as a member of the same party by making an affidavit before any officer authorized by law to take the same and filing, or causing to be filed, with the custodian of primary records, such affidavit which shall specify the name of the party with which, and the election district in which he is enrolled, the street address from which said voter enrolled, if any, the election district into which he has moved and the street address of his residence therein, if any, and stating that he resides in the last mentioned election district, and desires to be enrolled therein as a member of such party. Except as hereinafter provided, upon the filing of such affidavit the custodian of primary records shall enroll the name of such voter in the original enrollment books for the proper election district, specifying the district from which he is transferred and his new residence address, and shall also make a minute, opposite the entry of his name in the original enrollment books of the election district from which he has removed, showing the election district to which his name is transferred. Provided, however, that in any city in which the registers of electors constitute also the enrollments books, as now or hereafter provided by law, such voter shall appear before the custodian of primary records and deliver such affidavit in person and answer such questions concerning facts affecting his identity as such custodian may deem necessary. Such custodian shall compare the signature, if any, of the voter on the affidavit with his signature on the register of electors. If the voter be unable to write, the custodian shall submit to him, in lieu of requiring his signature, the questions required for the identification statement where an applicant for registry is unable to write. In such city, if the enrollment of a voter be transferred and if he be able to write, he shall also sign his name in the appropriate column of the register for the district to which he is transferred. In any assembly district of the state, if such a transfer be made, all entries relating to the enrollment of the voter on the original books, and relating both to registry and enrollment where the registers constitute the enrollment books, shall be transcribed in the books for the district to which he shall have moved. In any election district outside of such a city, the custodian of primary records may in his discretion in any case require the applicant to appear in person and answer such questions and, where personal registration is required, submit to such signature test as may be necessary to satisfy the custodian of his identity. Where an applicant for transfer is required either by the provisions of this section or by the custodian of primary records to appear in person, in any political subdivision of the state, such custodian shall not transfer the applicant's enrollment unless satisfied of his identity. Such transfer of enrollment shall be made but once during any year for which the original enrollment was made.

Nothing contained in this section shall be deemed to qualify a person

to vote at an official primary in the district to which his enrollment is transferred if he be not a resident of such district at the time of the primary and for thirty days theretofore, and he shall be subject to challenge as provided in section seventy-two. (*Added by L. 1916, ch. 537, § 12, in effect May 15, 1916.*)

§ 20. New or amended enrollment books for changed districts.—If in the interval between the days of registration and the day of the fall primary in the succeeding year, a new election district shall be created, or the boundaries of an election district shall be changed, and such change or the creation of such new district is to take effect within such interval, the custodian of primary records shall immediately prepare new enrollment books for such district from the enrollment books of the districts covering any part of the same territory, which new enrollment books shall be given the proper descriptive number of the assembly district or ward, or designation of the town, and the descriptive number of the election district, within which they are to be used but shall in other respects be in the same form and exhibit the same facts as the enrollment books then in force in the territory comprised within such new or changed district and shall contain the names of all the voters, as shown by the enrollment books then in force in such territory, who are the enrolled voters of the respective political parties within, and who are shown by such books to be residents of such new or changed election district. If an election district, whose boundaries are not changed, be given a new number or become included in a different assembly district, ward or town, within such interval, such custodian, before the next official primary at which the enrollment books for such new or changed election district may be used, shall appropriately change the descriptive number on such books of the assembly district, ward and election district, or the designation of the town, as the case may be. The certificate of such custodian to the effect that such new or changed books are true and correct and in conformity with this section shall be attached thereto. New enrollment books, prepared pursuant to this section, shall supersede the enrollment books then in force in such territory until a new enrollment therein takes effect under the other provisions of this article, and the custodian of primary records shall be charged with the same duties concerning the same, including the preparation of duplicate sets thereof or transcripts therefrom, as are provided in this article with respect to books containing enrollments begun on the days of registration. This section shall not be construed to authorize any person to vote in such new or changed district if he shall have ceased to reside in the territory thereof at the time of the preparation of such new books therefor or at the time he offers his vote at an official primary therein. (*Added by L. 1916, ch. 537, § 13, in effect May 15, 1916.*)

§ 25. Investigation of enrollment.—Whenever the state superintendent of elections shall require, it shall be the duty of the chief of police and

L. 1916, ch. 537.

State and county committees.

§§ 36, 37.

of every captain, in every city of the state to forthwith cause an investigation of each name enrolled in his precinct to be made and to report to the state superintendent of elections, at his office, in such city or at such other office as the state superintendent of elections may in writing designate any case of false enrollment there found. It shall be the duty of the board of elections of the county or of such city to furnish to the chief of police and police captain a printed or typewritten list of the enrolled voters of such city and afford necessary facilities, including clerical assistance, to either such chief of police or police captain, to transcribe the whole or any part of the enrollment list, in aid of the duty of investigation imposed on him under the provision of this section. (*Added by L. 1916, ch. 537, § 14, in effect May 15, 1916.*)

§ 36. State committee.—The state committee of each party shall be constituted by the election from each assembly district of one member who shall be an enrolled voter of the party within said district. Each member of a state committee shall be entitled to one vote.

In case of the death, declination, disqualification, removal from district, or removal from office of a member of a state committee or the failure to elect a member as by reason of a tie vote, the vacancy in such state committee caused thereby shall be filled by the remaining members of such state committee as provided in section forty-three of this chapter.

In the event of a change of the boundaries or designation of assembly districts after the election of members to such state committee, members thereof shall represent for the balance of their term, the district in which they reside, provided there is only one such member resident in such district. If no member, or more than one member, be resident in such district so changed, a vacancy from such district shall be deemed to exist which shall at a meeting, of which every member shall have three days' notice by mail from the chairman of the county committee, be filled by the members of the county committee residing in such assembly district until the next official primary election, at which time such vacancies shall be filled by election in the manner provided in this chapter for the balance of such term. (*Added by L. 1911, ch. 891, and amended by L. 1912, ch. 4, L. 1913, ch. 820, and L. 1916, ch. 537, § 14-a, in effect May 15, 1916.*)

§ 37. County committee.—The county committee of each party shall be constituted by the election in each election district within such county of at least one member, and of such additional members as the rules and regulations of the party may provide for such district, proportional to the party vote in the district for governor at the last preceding gubernatorial election, or in case the boundaries of such district have been changed or a new district has been created since the last preceding gubernatorial election, proportionate to the party vote cast for member of assembly at the last preceding general election; or, if no additional members are required by the rules, the voting power of each member shall be in proportion to such vote.

§§ 40, 43.

Committees; organization; vacancies.

L. 1916, ch. 537.

Each member of a county committee shall be an enrolled voter of the party residing in the assembly district containing the election district in which he is elected. Each member of a county committee shall be entitled to one vote.

In case of the death, declination, disqualification, removal from district or removal from office of a member of the county committee, or the failure to elect a member, as by reason of a tie vote, the vacancy in such county committee caused thereby shall be filled by the remaining members of such county committee as provided in section forty-three of this chapter. (*Added by L. 1913, ch. 820, and amended by L. 1916, ch. 104, in effect Mch. 31, 1916.*)

Eligibility.—Only an enrolled voter is eligible as a candidate for election as a member of a county committee, and the question of eligibility may be raised after the election. *Matter of Werther (1916), 94 Misc. 681, 158 N. Y. Supp. 321.*

§ 40. Organization and rules of committees.—Every state and county committee, shall within fifteen days after their election meet and organize by the election of a chairman, treasurer and secretary, and such other officers as its rules may provide, and within three days thereafter file with the secretary of state and the board of elections of the county a certificate stating the names and post-office addresses of such officers.

Each committee may prepare rules and regulations for the government of the party and the conduct of the official primaries within its political subdivision, which may include the payment of dues. Within three days after the adoption of such rules and regulations a certified copy of the same shall be prepared and filed by the secretary with the custodian of primary records for the political subdivision for which such committee is to serve. Such rules shall continue to be the rules and regulations for the committee until they are amended or new rules adopted. Such rules and regulations may be amended from time to time by majority vote of the committee upon the following notice:

A copy of the proposed amendment shall be sent with the notice of the meeting at which such amendments are to be proposed, such notice to be not less than five days before such meeting, and to be mailed at the post-office address of each member of the committee. Until the adoption of such rules and regulations, the rules and regulations of the existing committee, so far as consistent with this chapter, shall continue to be the rules and regulations of the party for that political subdivision. (*Added by L. 1911, ch. 891, renumbered and amended by L. 1913, ch. 820, and amended by L. 1916, ch. 537, § 15, in effect May 15, 1916.*)

§ 43. Vacancies in state or county committees.—Except as otherwise provided in this article, where a vacancy occurs in any state or county committee, such vacancy shall be filled by the remaining members of said committee by the selection of an enrolled voter of the party qualified for election from the unit of representation as to which said vacancy shall

L. 1916, ch. 537.

Designation of candidates by petition.

§ 48.

have occurred. (*Added by L. 1913, ch. 820, and amended by L. 1916, ch. 537, § 15-a, in effect May 15, 1916.*)

§ 48. Designation by petition.—1. Every petition for the designation of a candidate for party nomination or for election to a party position shall be in substantially the following form:

I, the undersigned, do hereby certify that I am a duly enrolled voter of the party, as hereinbelow specified, and entitled to vote at the next primary election of said party, that my place of residence is truly stated opposite my signature hereto, and I do hereby designate the following named person, or persons, as a candidate, or candidates, for nomination by the party for public office, or offices, or as a candidate or candidates for election to the position or positions, of the said party to be voted for at the official primary election to be held on the day of, A. D.,, as hereinafter specified, and it is my intention to support at the ensuing primary the candidacy of the person or persons and each of them herein designated by me.

	Public office	
Name of candidate.	or party position.	Place of residence.
.....
.....
.....
.....
.....

I do hereby appoint (here insert the names and addresses of at least three persons) as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set by hand the day and year placed opposite my signature.

Date.	Name of signer.	Residence.	Election district, town or ward.
.....
.....
.....
.....
.....

STATE OF NEW YORK, }
COUNTY OF..... } ss.:

On this day of, in the year, before me personally came (here shall be inserted the names of each and every voter appearing and making oath before the said officer) each of whom was to me personally known and known by me to be the voter whose name and place of residence is subscribed by him to the foregoing certificate and each

of the foregoing voters being by me duly and severally sworn did make oath that he is a voter and has truly stated his residence, and that it is his intention to support at the polls the candidacy of the person or persons designated for nomination for public office in the foregoing certificate of designation, if the same are nominated.

(Signature and official title.)

2. Any signature to a designating petition for the primary may as an alternative be authenticated by a qualified witness in the same manner as in the case of a nominating certificate for the election, as provided in section one hundred and twenty-three of the election law, the forms and procedure being changed to apply to the primary instead of the election, and with like penalty for any false affidavit, certificate or statement by any person. No signature to a designating petition shall be counted unless authenticated either by acknowledgment or by a witness as aforesaid.

3. A petition for the designation of candidates for party nomination or for election to party position may designate candidates for nomination for one or more public offices, or for election to one or more party positions, or both.

4. Petitions for the designation of candidates for party nominations or for the election of candidates for party positions or both shall be signed by enrolled voters resident within the political subdivision or unit of representation for which the nomination or election is to be made to a number equivalent to not less than three per centum of the total number of enrolled voters of the party residing within said political subdivision or unit of representation, as determined by the last preceding enrollment, provided, however, that for the following officers the number of signatures need in no case exceed the following fixed limits:

For the office of United States senator or for any office to be filled by all the voters of the state, three thousand signatures;

For the office of justice of the supreme court, judge of the court of general sessions in the city of New York, and judge of the city court of the city of New York, fifteen hundred signatures;

For any office to be filled by all the voters of a city containing more than a million inhabitants, fifteen hundred signatures;

For any office to be filled by all the voters of any other city of the first class or of any county or borough containing more than two hundred and fifty thousand inhabitants, according to the last preceding federal or state enumeration, one thousand signatures;

For any office to be filled by all the voters of any county or borough containing more than twenty-five thousand and not over two hundred and fifty thousand inhabitants according to the last preceding federal or state enumeration, or of any city of the second class, or of any congressional or senatorial district, five hundred signatures;

For any office to be filled by all the voters of any other county or of any

city of the third class or of any assembly district, two hundred and fifty signatures.

For any office to be filled by the voters of any political subdivision contained within another political subdivision, not to exceed the number of signatures required for such larger subdivision; and for any office to be filled by the voters of a subdivision containing more than one assembly district, county or other political subdivision, not to exceed the aggregate of the signatures required for the subdivisions or parts of subdivisions so contained.

5. All papers signed and verified in the manner and form above prescribed for the purpose of designating the same candidate for nomination for the same public office or the same party position shall, when bound together and offered for filing as provided in this chapter, be deemed to constitute one petition with respect to said candidate.

No enrolled voter shall join in designating a greater number of candidates for party nomination for a public office or for election to a party position than the number of persons to be elected thereto. Where an enrolled voter shall sign any petition or petitions designating a greater number of candidates than he is permitted to designate as aforesaid his signatures, if they bear the same date, shall not be counted, and if they bear different dates they shall be counted in the order of their priority of date and only so far as he was entitled to make designations. (*Added by L. 1911, ch. 891, and amended by L. 1913, ch. 820, L. 1915, ch. 678, and L. 1916, ch. 537, §16, in effect May 15, 1916.*)

§ 49. Filing of designations.—*Subd. 2, amended by L. 1916, ch. 537, §17, in effect May 15, 1916, as follows:*

2. When to be filed. All designations shall be filed not earlier than the fifth Tuesday and not later than the fourth Tuesday preceding the primary at which the candidates therein designated are to be voted for. All designations shall at the time of the filing thereof be stamped or indorsed by the secretary of state, or the custodian of primary records, as the case may be, with the day, hour and minute of such filing.

§ 56. Contests; judicial review.

Correction of return falsely stating vote registered by voting machine; mandamus proper remedy; writ may direct county canvassers to correct return; production of voting machine in court.—Where, through the inadvertence of an inspector of elections in not correctly announcing the number of votes cast as indicated by a voting machine, an erroneous statement of the vote has been signed by the inspectors, they may be compelled by mandamus to correct the return to accord with the vote registered by the machine, where there is no contention that the machine did not correctly register and count the votes. Such correction of the erroneous return does not require a recount of the votes, and the writ of mandamus in no sense compels a judicial act. The court has power to issue said writ although the Election Law does not specifically so provide. Said writ of mandamus may properly direct the board of county canvassers to correct the return, although it does not appear that the board has refused to perform its duty. *It seems, that*

upon the hearing of the application for the writ of mandamus it was proper for the court to require the voting machine to be produced before it and opened. *Smith v. Wenzel* (1915), 171 App. Div. 123, 157 N. Y. Supp. 85.

Review of primary election; statutory powers of court; form of order.—Where the inspectors of election have been made parties to the proceeding, the court has power to order the custodians of primary election records to produce ballots cast for rival candidates for the position of State committeeman for examination and recanvass, if the correctness of the original canvass has been challenged, and may provide that the rival candidates may be present in person and by counsel, and that examination shall be made in the presence of the custodians of the records, or employees of their department designated by them, and that the election inspectors may likewise be present in person or by counsel. It is not necessary that a separate proceeding be taken against the officers of each election district, but there may be one proceeding against all the officers of the several districts, where each contributed to a result alleged to be incorrect. *Matter of Tenjost* (1916), 171 App. Div. 129, 157 N. Y. Supp. 528.

Review of action of custodians of primary records; recount of votes unauthorized.—In a proceeding under sections 41 and 56 of the Election Law to review the action of the custodians of primary records the court can review only such action as the custodians have themselves taken and correct errors which they have made. The statute does not authorize a recount of the votes and a declaration of a different result based upon such recount in a proceeding against the custodians of primary records. *Matter of Tenjost* (1915), 169 App. Div. 300, 154 N. Y. Supp. 708.

While in a summary proceeding under this section to review the action of any custodian of primary records in canvassing and certifying the result of a primary election the court may make any change in the result of such primary election as certified to by the custodian of primary records, it will not interfere until it is shown that the action of the custodian in canvassing and certifying the result is fraudulent, erroneous or in violation of some duty or responsibility imposed by law. *Matter of Sherman* (1915), 92 Misc. 589, 157 N. Y. Supp. 236.

Names written in blank spaces.—The respondent, John A. Lewis, having been duly designated as a candidate for Democratic county committeeman for the second election district of the town of Arcade, Wyoming county, his name was printed on the official primary ballot and immediately below his name was a blank space. The whole number of votes cast at the election was thirty-eight of which seventeen were counted and canvassed for "E. D. Sherman," two for "D. Sherman," one for "Dee Sherman" and eighteen for the respondent. The votes for Sherman were cast by writing in the name in the blank space on the ballot. The inspectors of primary election canvassed and returned the vote as above stated and the custodians of primary records thereafter issued a certificate of election to respondent. In a summary proceeding brought by E. D. Sherman under the Election Law to review the action of the inspectors of election and custodians of primary records and to require them to cancel the certificate of election issued to the respondent and to issue such certificate to the petitioner, the inspectors and custodians were all brought in as parties to the proceeding. Held, that assuming that the affidavits submitted on the hearing abundantly show that two votes cast at the primary election for "D. Sherman" and one vote for "Dee Sherman" were intended for the petitioner and that if they were so counted they would change the result, there was nothing in the facts to show wherein the action or neglect of any public official had contributed in the slightest degree to this state of affairs, and that the application should be denied. *It seems* that the proper proceeding for petitioner to try out his title to the office would be by an appropriate action, the statute providing as a preliminary thereto for an examination of the ballots cast, if so desired. *Matter of Sherman* (1915), 92 Misc. 589, 157 N. Y. Supp. 236.

L. 1916, ch. 537.

Official primaries.

§§ 70, 71.

When case not within section; when court without jurisdiction.—At a meeting of the Democratic county committee of Washington county, or of some members thereof, held after a proper certificate of petitioner's election at a former meeting as chairman of said committee had been filed with the board of elections of the county and with the secretary of state, a resolution purporting to remove petitioner from his office as chairman was adopted, and thereafter another was chosen as chairman of said committee and a certificate of his election was filed as was the other certificate. Held, that the case did not come within this section which provides for a summary proceeding before the court or a judge, and that the court was without jurisdiction to review the proceeding of the county committee held after petitioner had been elected chairman. *Matter of Ganley* (1915), 90 Misc. 445, 154 N. Y. Supp. 773.

§ 70. Organization and conduct of official primaries—1. Election officials for each election district within a primary district shall comprise the election officers for such primary district.

2. All said officers shall take and subscribe the constitutional oath of office, before entering on the discharge of their duties.

3. Such primary shall be held open, for voting thereat, from seven o'clock in the forenoon until nine o'clock in the evening except in a city of over one million inhabitants, where such primary shall be held open, for voting thereat, from three o'clock in the afternoon until nine o'clock in the evening.

4. The primary election officers shall perform the same duties that they are required to perform in a general election, and such additional duties as are in this chapter prescribed and shall receive the same pay as for services on the last day of registration; except that in any city of over one million inhabitants, they shall respectively receive seven dollars and fifty cents for their services at each official primary.

5. In each year an official primary election shall be held on the seventh Tuesday before the general election; in each year in which a president of the United States is to be elected, an additional official primary election shall be held on the first Tuesday in April.

6. Subject only to such differences as are herein provided or as may be necessary, the primary in a city of over one million inhabitants shall be conducted in the same manner as the general election. In any such city, a chairman of the board of primary inspectors shall be selected in the same manner as a chairman of a board of inspectors at a general election. (*Added by L. 1911, ch. 891, and amended by L. 1913, ch. 820, L. 1915, ch. 678, and L. 1916, ch. 537, § 18, in effect May 15, 1916.*)

§ 71. Qualification of voters at official primaries.

Change of residence after enrollment; residence in new district over six months.—A voter who has enrolled in an election district and subsequently changed his residence by moving into another district in which he has not enrolled, but in which he has resided for more than six months immediately preceding the holding of the primary, is not entitled to vote at the primary election, even though his name has not been stricken from the enrollment list in the first election district and no proceeding instituted for that purpose, and he cannot compel the board of inspectors

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to receive his ballot by taking the oath provided for by section 72 of the Election Law. *Steinbrink v. Lloyd* (1915), 169 App. Div. 354, 154 N. Y. Supp. 870. See also Atty. Genl. Opin., 5 State Dep. Rep. 481 (1915).

§ 72. Challenges at official primary elections.

The oath provided by this section is a means of identifying only a voter who is enrolled in the election district in which he seeks to vote. *Steinbrink v. Lloyd* (1915), 169 App. Div. 354, 154 N. Y. Supp. 870.

§ 74. Primary districts, officers and polling places.—The custodian of primary records shall thirty days before each official primary day, divide every ward in a city, except a city of over four hundred thousand inhabitants, and divide every village having five thousand inhabitants or more, into primary districts, each of which shall consist of two contiguous election districts, except that in case there is an odd number of election districts in such ward or village, the highest numbered election district shall be a primary district by itself. There shall be two polling places in each of such primary districts which shall be designated and provided at public expense by the officers or boards whose duty it is to provide polling places for days of general election, and which shall be, so far as they are available, the same places as were used for the last preceding general election. The custodian of primary records shall assign one of the polling places in each such primary district to the party which, at the last election of governor, cast the highest number of votes for governor, and at the other polling place in such primary district there shall be held the primary elections of all other parties. In all other villages and towns, and in each city having over four hundred thousand inhabitants, each election district shall constitute a primary district. In a city, town or village in which each election district constitutes a primary district there shall be for each primary district primary election officers, who shall consist of the election inspectors, poll clerks and ballot clerks for the election district comprising such primary district and such inspectors shall be the board of primary inspectors. In election districts in which voting machines are used at the general election the ballot clerks to serve at the primary election shall be appointed by the board of election inspectors for the purposes of such primary election only. In a city or village having more than five thousand inhabitants, except a city having over four hundred thousand inhabitants, there shall be for each primary district two groups of primary election officers, one of which shall consist of the election inspectors, poll clerks and ballot clerks for the election district or districts comprised within such primary district who shall at the time represent the party which at the last preceding election of a governor shall have cast the largest number of votes for governor, and the other of which shall consist of the election inspectors, poll clerks and ballot clerks who shall represent the party which, at such election, shall have cast the second largest number of votes for governor. The first mentioned officer shall conduct the primary election of the party represented by them and the second mentioned officers

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shall conduct the primary election of all other parties at the time entitled to hold primary elections. The election inspectors belonging to each such group of primary officers shall be the board of primary inspectors. In a primary district having two boards of primary election inspectors each board shall elect an inspector chairman of the board before the opening of the polls at a primary election. In a primary district having one board of primary election inspectors the chairman of the board of election inspectors for the election district shall, if present, be the chairman of such board of primary officers, except as otherwise provided by law.

In a city, town or village in which each election district constitutes a primary district the polling place in each such primary district shall be designated and provided at public expense by the officers or boards whose duty it is to provide the polling places for the general election, and, where practicable, it shall also be the same place that was used at the last preceding general election, unless, in a city having over one million inhabitants, the primary polls be placed in a school or other public building as provided in section two hundred and ninety-nine. (*Renumbered and amended by L. 1911, ch. 891, and amended by L. 1913, ch. 820, L. 1915, ch. 678, and L. 1916, ch. 537, § 19, in effect May 15, 1916.*)

§ 82. **Preparation of ballot by voters.**—The voter, on retiring to the voting booth, shall prepare his ballot in the following manner: He shall make a cross X mark in the voting square at the left of the name of each candidate for whom he desires to vote. A cross X mark is any straight line crossing any other straight line at any angle within the voting space and no ballot shall be declared void because a cross X mark thereon is irregular in form. It shall not be lawful to make any mark on the ballot other than a cross X mark for the purpose of voting, and such mark shall be made only with a pencil having black lead, and only in the voting space to the left of the name of a candidate; except that the voter may write with a pencil having black lead in the blank space under the title of the proper office or party position the name of any person or persons for whom he desires to vote, whose name or names are not printed upon the ballot; not exceeding with the candidates for whom he has voted by cross X mark the total number of persons by whom such office or position is to be filled. It shall not be lawful to deface or tear a ballot in any manner, nor to erase any printed name, device, figure, word or letter therefrom, nor to erase any mark made thereon by such voter nor inclose in the folded ballot any other paper or any article. If the voter deface or tear a ballot or wrongly mark the same or make an erasure thereon, he may obtain one additional ballot on returning to the ballot clerk the one so defaced or wrongly marked. (*Added by L. 1911, ch. 891, and amended by L. 1913, ch. 820, and L. 1916, ch. 537, § 20, in effect May 15, 1916.*)

Marking of ballots.—See cases under section 358, post.

§ 86. **Intent of voters.**—If the voter marks more names than there are

persons to be nominated for an office or elected to a party position, or if for any other reason it is impossible to determine the voter's choice of a candidate for a party position or for nomination for an office, his vote shall not be counted therefor but shall be returned as a blank vote for such nomination or party position.

A void ballot is a ballot upon which there shall be found any mark other than a cross X mark made for the purpose of voting, which voting mark must be made with a pencil having black lead, only in a voting space to the left of the name of the candidate; or one upon which anything is written other than the name or names of any person or persons not printed upon the ballot for whom the voter desires to vote, which must be written in the blank space under the title of the proper office or party position with a pencil having black lead; or one which is defaced or torn by the voter; or one upon which there shall be found any erasure of any printed device, figure, letter or word, or of any name or mark written thereon, by such voter; or in which shall be found inclosed a separate piece of paper or other material; and upon such ballot no vote for any candidate thereon shall be counted. Any straight line across any other straight line at any angle within a voting space shall be deemed a valid voting mark; but no ballot shall be declared void because a cross mark thereon is irregular in form. (*Added by L. 1911, ch. 891, amended by L. 1913, ch. 820, and L. 1916, ch. 537, § 21, in effect May 15, 1916.*)

§ 89. **Canvass.**—*Subd. amended by L. 1916, ch. 537, § 22, in effect May 15, 1916, as follows:*

1. Canvass by custodians of primary records. The custodian of primary records shall forthwith proceed to canvass the statements of results filed with him as provided in this article, and shall complete such canvass within one hundred and twenty hours from midnight of the day upon which the primary election was held.

He shall canvass separately the votes cast in each election district by the enrolled voters of the several parties respectively.

The candidate for a party nomination to public office, or for election to a party position, to be filled by the voters of a territory wholly within an election district, ward or town, who has received the highest number of votes cast in the primary election of a party in such election district, ward or town, shall be the nominee of said party for such public office, or shall be elected to such party position. Said custodian shall deliver upon request to such candidate, if he be elected to a party position, a certificate of his election.

The candidate for a party nomination to public office, or for election to a party position, to be filled by the voters of a district wholly within the jurisdiction of a custodian of primary records and greater than an election district, ward or town, who has received the highest number of votes cast in the primary election of a party in such district shall receive

the nomination of said party for the public office, or be elected to the party position, for which he was designated or voted for. The custodian of primary records shall deliver upon request to such candidate, if he be elected to a party position, a certificate of such election.

The custodian of primary records shall duly certify to the secretary of state a statement of the vote cast in the county in the primary election by the enrolled voters of each party, respectively, for all candidates for nomination for public office, or for election to party position, whose designations are required by this chapter to be filed in the office of the secretary of state. Such statement shall be filed by such custodian in the office of the secretary of state within one hundred and twenty hours from midnight of the day on which the primary election was held.

§ 123. Independent certificates of nomination.—1. Independent nominations shall be made by a certificate subscribed by the required number of such electors, each of whom shall add to his signature his place of residence and make oath that he is an elector and has truly stated his residence. The making of the said oath shall be proved by the certificate of the notary or other officer before whom the said oath is taken, and it shall be unnecessary for an elector who has subscribed a certificate of nomination, as herein provided, to sign any affidavit as to the matter to which he has made oath as aforesaid. The certificate hereinbefore provided for of the notary or other officer shall be in the following form substantially:

STATE OF NEW YORK,)
County of.....) ss.:

On the day of, in the year, before me personally came (here shall be inserted the names of each and every elector appearing and making oath before the said officer), each of whom was to me personally known and known by me to be the elector whose name and place of residence is subscribed by him to the foregoing certificate and each of the foregoing electors being by me duly and severally sworn did make oath that he is an elector and has truly stated his residence, and that it is his intention to support at the polls the candidacy of the person or persons nominated for public office in the foregoing certificate of nomination.

(Signature and official title.)

2. As an alternative method of authentication, in lieu of such acknowledgment, provision may be made in such nominating certificate for a column under the title "witness," for the signature of a witness opposite the names of signers of the certificate. There may be a subscribing witness for any signature, and the same person may act as witness for any number of signers. No person shall be qualified to act as such witness unless he shall be a freeholder within or shall have been for the last preceding five years a resident of the county in which the person resides whose signature

he is witnessing; nor unless he shall have been registered either for the same address or within the same election district for the last preceding two general elections, or the territory of such election district as defined at the time of the first of such two registrations; nor unless his good character and honesty are certified to as provided below either by at least one-half of the candidates whom the certificate nominates or by the committee to fill vacancies named therein, which certificate of good character and honesty must be filed with the board or officer with whom the nominating certificate is filed. Such witness must sign his name in the presence of the voter whose name he is witnessing and must thereafter appear before an officer authorized to administer oaths and take acknowledgments and make the following affidavit to be attached to the nominating certificate:

STATE OF NEW YORK, }
County of....., } ss.:

On this day of, in the year, before me personally came (here insert name of witness), to me personally known, who, being by me duly sworn, did depose and say that he knew each of the voters whose names and places of residence are subscribed to the foregoing nominating certificate, as to whose signatures deponent has signed as a witness above, and deponent makes oath that he saw each of them sign the same, and that each such voter on signing such certificate declared to deponent that it was his intention to support at the polls the candidacy of the person or persons nominated for public office in the foregoing nominating certificate; and that deponent thereupon signed his name as a witness thereto in the presence of each such voter.

Said deponent does also make oath that he is (here state his qualifications to act as a witness as above provided) and that he has been registered for the last two general elections as follows: For the general election of 19.. I was registered from (state address) in the election district of the assembly district, county of, state of New York. For the general election of 19.. I was registered from (state address) in the election district of the assembly district, county of, state of New York.

.....
(Signature of witness.)

Subscribed and sworn to before me,
this day of

.....
(Official title of officer.)

3. The certificate to the good character of the witness must be substantially as follows:

The undersigned hereby certifies to the good character and honesty of the following named person acting as witness to signatures upon a nominating certificate for the next ensuing election:

L. 1916, ch. 537.

Independent certificates of nomination.

§ 123.

Name of witness	Permanent residence of witness	Business of witness	Business address of witness
.....
.....
.....

I certify that I have known the said witness for (here state length of acquaintance) and that all the facts herein stated as to the character, honesty, residence, business and business address of the witness certified to, are stated upon my knowledge.

Dated.....

(Signature).....

(Residence).....

If the person making such certificate of good character and honesty has not personal knowledge of all such facts, his certificate may nevertheless be accepted, provided he shall state therein that any fact, specifying it, not made on his personal knowledge, is made in good faith upon information received from another person whom he names, and further provided that he attaches a certificate of such other person in substantially the foregoing form stating such fact or facts upon personal knowledge. Such other person must be a qualified elector of the district for which the nomination is made.

4. Any such witness, candidate, member of committee to fill vacancies or other person, who makes a false affidavit, certificate or statement as thus provided for, is guilty of a misdemeanor and shall be punished by imprisonment for a term of not less than three months.

5. The certificate of nomination and each separate paper thereof, if there be more than one such paper, shall contain the following declaration which shall be subscribed by the signers thereof:

"We the undersigned duly qualified electors of the district for which the nomination for public office is hereby made under the provisions of sections one hundred and twenty-two and one hundred and twenty-three of the election law do hereby declare that it is our intention to support at the polls the candidacy of the person or persons herein nominated for public office."

The certificate shall also contain the titles of the offices to be filled, the name and residence of each candidate nominated, and if in a city, the street number of such residence and his place of business, if any; and shall designate in not more than five words the political or other name which the signers shall select, which name shall not include the name of any organized political party.

A certificate may designate upon its face one or more persons as a committee to represent the signers thereof, for the purposes specified by

section one hundred and thirty-five of this article. The signatures to the certificate of nomination need not all be appended to one paper. No person shall join in nominating more candidates for any one office than there are persons to be elected thereto, and no certificate shall contain the names of more candidates for any office than there are persons to be elected to such office.

6. The name of no person signing an independent certificate of nomination shall be counted unless such person shall on one of the days of registration in such year be registered as a qualified elector, and in case a candidate nominated by an independent certificate of nomination be at the time of filing the said certificate or afterwards the candidate of a political party for the same office the name of no person who is an enrolled member of such political party shall be counted, except where such nomination is afterwards made by a party committee or committee to fill vacancies. For the purpose of ascertaining whether the person whose name appears on an independent certificate of nomination signed such certificate, the affidavit or testimony of such person that he did not sign such certificate shall be prima facie evidence that he did not sign such certificate. If the name of a person who has signed a certificate of independent nomination appear upon another certificate nominating the same or a different person for the same office, it shall not be counted upon either certificate. (*Amended by L. 1911, ch. 649, and L. 1916, ch. 537, § 23, in effect May 15, 1916.*)

§ 151. **Additional meetings for registration.**—If a special election be called by the governor or a special or other election be appointed by or pursuant to law for a time other than the day of general election, the inspectors of election of the various election districts in the political subdivision for which such special or other election is to be held shall meet in their respective districts on the second Saturday preceding such election, from eight o'clock in the forenoon to ten o'clock in the evening, for the purpose of revising and correcting the register of voters as provided in this article. (*Added by L. 1916, ch. 537, § 24, in effect May 15, 1916.*)

§ 153. **Adding and erasing names on register.**—If the board of inspectors at any meeting for the registration of electors shall have neglected or refused to place upon the register of electors the name of any person who is entitled to have his name placed thereon, application may be made to the supreme court, or any justice thereof in the judicial district in which such election district is located, or of a county adjoining such judicial district, or to a county judge of the county in which such election district is located, for an order to place such name upon the register of electors; and such court, justice or judge may, upon sufficient evidence, and upon such notice of such application, of not less than twenty-four hours, to the board of inspectors and such other persons interested, as the court, justice or judge may require, order such inspectors to con-

vene as a board of registration on the second Saturday before such election, and to add the name of such person to such register of electors, and such register shall be corrected accordingly; but no court, justice or judge shall order the name of any person to be added to the register of electors unless it shall have been omitted therefrom through the fault, error or negligence of the election officers. In case the name of any person who will not be qualified to vote in such election district, at the election for which such registration is made, shall appear upon such register, application may be made in like manner by any elector of the town or city in which such election district is located or by the state superintendent of elections or any deputy state superintendent of elections to any court, justice or judge hereinbefore designated, for an order striking such name from the register, and such court, justice or judge may, upon sufficient evidence, and upon such notice of such application, of not less than twenty-four hours, to the person interested as the court, justice or judge may require, served either personally or by depositing the same in the post-office addressed to said person by his name, and at the address which appears in the register certified by the inspectors of election order such board to strike such name from such register of voters, and such register shall be corrected accordingly. In all applications to strike the names of voters from the register under this section an affidavit by the state superintendent of elections or any of his deputies when duly deputed by the state superintendent of elections for that purpose, that investigation was made by him pursuant to the provisions of section four hundred and seventy-five of this chapter, and that the affiant did visit and inspect the premises claimed by the voter as his residence, and did interrogate an inmate, house dweller, keeper, caretaker, owner, proprietor or landlord thereof or therein as to the said voter's residence therein or thereat, and that the said affiant was informed by one or more of said persons, naming them, that they were acquainted with and knew the persons residing therein or thereat, and that the voter did not reside at said premises thirty days before election, shall be presumptive evidence against the right of the voter to register from such premises, and in case the court, justice or judge direct that service of the order to show cause may be made by depositing the same in the post-office, such service shall not be complete until a copy of the order to show cause shall also have been served upon the custodian of primary records for the political subdivision in which such election district is located, and upon the chairman of each political committee for the political subdivision in which such election district is located. If upon the hearing of such application the court, justice or judge shall decide that the name of the elector shall be stricken from the register, the order of the court, justice or judge shall direct that the board of elections shall cause such name to be stricken from the register and also from the books of enrollment if it appears therein. In case the elector has, through no fault or neglect of his own, been reg-

istered in a wrong election district, the court may, upon proper proof, direct that his name be stricken from the register of the district in which he is not a qualified elector and, if he is a qualified elector in an adjoining election district, may direct that his name be added to the register of electors in the election district in which he is a qualified elector. No application to add a name to or strike a name from the register shall be made after a day at least two days prior to the second Saturday before election. (*Amended by L. 1911, chs. 649, 740, L. 1913, ch. 820, and L. 1916, ch. 537, § 25, in effect May 15, 1916.*)

§ 155. Register; how arranged; signature law.—1. This sub-division shall apply to election districts outside of a city having more than one million inhabitants. In all such election districts the register shall be arranged in twenty-four columns, except that in election districts in which personal registration is not required it shall consist of twenty-three columns, of which the first twenty-one columns shall be the same as in the registers for election districts in which personal registration is required. The leaves of the register shall be indexed from A to Z. In the first column of such register there shall be entered, at the time of the completion of the registration on the last day for registration, a number opposite the name of each person so enrolled, beginning with "one" opposite the first name entered in the page indexed A and continuing in numerical order to and including the last name entered upon the last page of such register. On each day of registration there shall be entered in the second column thereof the surname of such persons in the alphabetical order of the first letter thereof, on the page bearing the index letter of such surname and in the third column the christian name or names of such persons respectively. In the fourth column shall be entered the residencé number or other designation, and in the fifth column the name of the street or avenue of such residence or a brief description of the locality thereof. In the sixth column shall be entered the number of the floor or room occupied by the elector at the residence given by him, and in the seventh column shall be entered the full name of the householder, tenant, subtenant or apartment-lessee with whom the elector resides, and in the eighth column shall be entered his age, in the ninth, tenth and eleventh columns shall be entered his length of residence by years, months and days as the case may be, in the state, county and election district, respectively; and in the twelfth column shall be entered the country of his nativity which shall mean the country, state or province of the elector's birth, irrespective of his former political allegiance. In the thirteenth column, if he be a naturalized citizen, shall be entered the date of the naturalization certificate under which he claims citizenship and in the fourteenth column shall be entered the designation of the court issuing such naturalization certificate. In the fifteenth, sixteenth, seventeenth and eighteenth columns shall be entered respectively the name of

the state, the city or town, and the street number and the name of the street or avenue of the residence of such person from which such person last registered or voted, and the year in which he last registered or voted. In the nineteenth column shall be entered the date of the registration of the elector. In the twentieth column shall be entered if the elector is in business for himself or with others the name under which he is so in business, or, if the elector is employed by some other person, the name of his present employer. If he is not in business and has no employment, the word "none" shall be entered, together with the name under which he was last in business or the name of his last employer, if any. In the twenty-first column shall be entered the street and number, or if it has no street number, a brief description of the location of the place, if any, where he is so in business or employed, or, if unemployed, the place, if any, where he was last in business or employed. The information required to be stated in the twentieth and twenty-first columns shall only be asked in the event that the person offering to register shall not have registered in the same county in the general election immediately preceding. The twenty-second column of the register of any election district in which personal registration is required shall be reserved for the signature, at the time of registration, of any elector who registers personally in any such district, or in case such elector alleges his inability to write, for entering therein the number of the "identification statement for registration day" made by such elector as hereinafter provided. Above each horizontal line in the said twenty-second column shall be printed the words "the foregoing statements are true" and the elector shall at the time of personal registration, sign his name by his own hand and without assistance, using an indelible pencil or ink, below such words on the horizontal line in the register of electors, which register shall be known as the "signature copy." Said signature copy shall be one of the registers, other than the public copy, which signature copy shall be kept by an inspector of opposite political faith from the chairman, and shall be used at the polls on election day. The twenty-third column, or, in the register for an election district in which personal registration is not required, the twenty-second column, shall be reserved for entering the consecutive number on the stub of the official ballot, voted by the elector on election day. In the twenty-fourth column, or, in the register for an election district in which personal registration is not required, the twenty-third column, shall be entered, opposite the name of each elector, under the heading "remarks" the facts regarding challenges, oaths and other facts affecting such elector required to be recorded, including, in the case of a person not required to register personally who did in fact so register, the word "personal."

2. This subdivision shall apply only to election districts within a city having more than one million inhabitants. In all election districts in any such city, the register shall be arranged in twenty-nine (at the general

election preceding a presidential primary, thirty) columns, and the leaves thereof shall be indexed from A to Z. The first column of the register shall be entitled "Registration No. of Voter," and in such column shall be entered at the time of the completion of the registration on the last day for registration, a number opposite the name of each person so registered, beginning with "one" opposite the first name entered in the page indexed A and continuing in numerical order to and including the last name entered upon the last page of such register. Columns two to twenty-four inclusive shall be filled in on each day of registration as each voter is registered, and the remaining columns at the times respectively provided. All such columns shall be appropriately entitled to indicate their purpose. In the second column shall be entered the date of the registration of each voter. In the third column shall be entered the surname of such persons in the alphabetical order of the first letter thereof, on the page bearing the index letter of such surname. In the fourth column shall be entered the christian or given name or names of such persons respectively. In the fifth and sixth columns shall be entered the residence number or other designation, and the name of the street or avenue of such residence or a brief description of the locality thereof. In the seventh column shall be entered the number of the floor or room occupied by the elector at the residence given by him. In the eighth column shall be entered the full name of the householder, tenant, subtenant or apartment lessee with whom the elector resides. In the ninth column shall be entered the elector's age. In the tenth, eleventh and twelfth columns shall be entered the length of the elector's residence by years, months and days as the case may be, in the state, county and election district, respectively. In the thirteenth column shall be entered the country of his nativity, which shall mean the country, state or province of the elector's birth, irrespective of his former political allegiance. In the fourteenth and fifteenth columns, if the voter be a naturalized citizen, shall be entered the date of the naturalization certificate under which he claims citizenship and the court issuing such naturalization certificate. In the sixteenth, seventeenth, eighteenth and nineteenth columns shall be entered respectively the name of the state, the city or town, the street number and the name of the street or avenue of the residence of such person from which such person last registered or voted, and the year in which he last registered or voted. In the twentieth column shall be entered, if the elector is in business for himself or with others, the name under which he is so in business, or, if the elector is employed by some other person, the name of his present employer. If he is not in business and has no employment, the word "none" shall be entered, together with the name under which he was last in business or the name of his last employer, if any. In the twenty-first column shall be entered the street and number, or if it has no street number, a brief description of the location of the place, if any, where he is so in business or employed, or, if unemployed, the place, if any, where he was last in business or employed. The twenty-second column shall be re-

served for the signature of any elector who registers personally, at the time of registration, or, in case the elector alleges his inability to write, for entering therein the number of the "identification statement for registration day" made by such elector as hereinafter provided. Above each horizontal line in the said twenty-second column shall be printed the words "the foregoing statements are true" and the elector shall at the time of personal registration, sign his name by his own hand and without assistance, using an indelible pencil or pen and ink, below such words on the horizontal line in the register of electors, which register shall be known as the "signature copy." Said signature copy shall be one of the registers, other than the public copy, which signature copy shall be kept by an inspector of opposite political faith from the chairman, and shall be used at the polls on election day. In the twenty-third column the person who has personally made the entries aforesaid in registering the voter shall sign his own initials in evidence thereof, which signature must be made at the same time that the voter is registered. In the twenty-fourth column shall be entered the number on the enrollment blank which is given to the voter to enable him to enroll in a party as provided in article two of this law. The twenty-fifth column shall be reserved for the entry of the name of the party, if any, in which the voter enrolls, or other statement, as provided in said article two of this law. The twenty-sixth column shall be entitled "No. of Stub, Election Day," and shall be reserved for entering therein the consecutive number on the stub of the official ballot or set of ballots voted by such voter on election day. The twenty-seventh column shall be entitled "No. of Stub, 1st Primary," and shall be reserved for entering therein the consecutive number on the stub of the official ballot cast by such voter at the first official primary, whether spring or fall, following the general election for which such registration was made. The twenty-eighth column shall be entitled "No. of Stub, 2d Primary," and shall be reserved for entering therein the consecutive number on the stub of the official ballot cast by such voter at the next succeeding official primary held prior to the next enrollment, or, should an unofficial primary be held, for the entry of the word "Yes" to indicate that such voter voted at such primary. In preparing the registers for the general election next preceding a presidential election an additional column (the twenty-ninth in such case) shall be included, entitled "No. of Stub, 3rd Primary," and shall be reserved for use at a third primary, if any, as above provided for a second primary in other years. The last column in the register shall be entitled "Remarks regarding challenges, oaths, and other facts required to be recorded," and in such column shall be entered, opposite the name of each voter, with the date of each such entry, such record of challenges, oaths, and other facts relating to him as this law requires to be entered in the register and are not otherwise provided for.

3. The provisions of this subdivision shall apply to all election districts in which the registration of electors is required to be personal. If the

elector alleges his inability to so sign in the cases provided for in either of the foregoing subdivisions, one of the inspectors, designated by the chairman, shall read to the elector the following list of questions from a book to be furnished said inspector and to be known as "identification statements for registration day," and said inspector shall write down in said book the answers of the elector to said questions: What is your true name? What is or was your father's full name? What is or was your mother's full name? What is your occupation? What is the name of your present employer? If unemployed, what is the name of your last employer? Where is or was his place of business? Are you married or single? Where did you actually reside immediately prior to taking up your present residence; state floor and character of premises? At the bottom of each list of questions shall be printed the following statement: "I certify that I have read to the above named elector each of the foregoing questions and that I have truly recorded his answers as above to each of said questions," and said inspector who has made the above record shall forthwith sign his name to said certificate and date the same. The above questions shall be printed on separate sheets of paper which shall be furnished said inspector bound together in book form and numbered consecutively, and the number corresponding to the number on each sheet containing said list of questions shall be entered when the questions have been answered, in the twenty-second column, in the register of electors in which the electors registering have signed their names. Said book of "identification statements for registration day" shall be kept at all times with the register in which the electors sign their names as hereinbefore provided. A sufficient number of identification statements for registration and election days, bound in book form shall be furnished to each board of inspectors in the same manner as the registration and poll-books are now furnished to said boards of inspectors. The lines in the registers and poll-books for election districts in which the registration of electors is required to be personal shall be one-half inch apart.

4. Each page of the registers and poll-books for any election district in the state shall in every case be consecutively numbered. (*Amended by L. 1910, ch. 428, L. 1911, ch. 649, L. 1915, ch. 678, and L. 1916, ch. 537, § 26, in effect May 15, 1916.*)

§ 157. Preparation and distribution of registry lists; investigation of false registration.—The board of inspectors of each election district shall, immediately after the close of the last day of registration, make and complete one list of all persons registered in their respective districts, in the numerical order of the street numbers thereof, which list shall be signed and certified by the board of inspectors. Such list shall be delivered by the chairman of the board of inspectors to the police captain of the precinct, if any, in which the election district is located, or an officer thereof, or to the town clerk, who shall forthwith deliver the same to the board of elections

in the county in which such election district is located. The board of elections of each county containing a city of the first or second class and the board of elections of the city of New York shall, as soon as possible after the delivery of such lists, and not less than six days prior to the day of election, print in pamphlet form for each ward of any such city within their respective counties, or for each assembly district in the city of New York, not less than twenty-five times as many copies of said registration lists as there are election districts in such assembly district or ward, so that each assembly district or ward pamphlet shall contain the lists of the several election districts in such assembly district or ward. Upon the written application of the chairman of the executive committee of the county committee of any political party whose candidates are entitled to a place upon the official ballot to be voted at the election for which the registration is made, the board of elections of such city or of any such county, as the case may be, shall respectively deliver to such chairman five copies of each assembly district or ward pamphlet for each election district within such city, or, in the city of New York, within each assembly district of the county which such county committee represents. Two pamphlets containing the lists of the registered persons in the election districts within his precinct shall be furnished to each police captain in all such cities. It shall be the duty of every police captain in every city of the state to forthwith cause an investigation of each name registered in his precinct to be made and to report to the state superintendent of elections at his office in such city or at such other office as such superintendent may in writing designate any case of false registration there found. In any city of the state in which registration lists are not printed, including third class cities, it shall be the duty of the board of elections of the county or of such city to afford necessary facilities, including clerical assistance, to every such police captain in transcribing the whole or any part of the registration lists in aid of the duty of investigation imposed on him under the provisions of this section. The board of elections in each county shall furnish to the state superintendent of elections three copies of each pamphlet printed by it. The remaining pamphlets so printed shall be distributed in the discretion of the said boards, which shall have respectively the power to charge for each pamphlet a sum not exceeding ten cents a copy, and any moneys resulting from the sale thereof shall be paid to the comptroller of the city of New York or county treasurer of the county for the benefit of the treasury of such city or county. The boards of election shall contract for the printing of such lists of registered electors with whomsoever it may seem to said board to be most advantageous to so contract, but such contract shall only be awarded after proper public notice and to the lowest bidder.

Such lists shall be made and printed as near as may be in the following form, to wit:

§§ 158, 159.

Registration of voters.

L. 1916, ch. 537.

GRAND STREET.

Residence number or
other designation.

14

Name of elector.

Smith, John M.

15

Jones, Charles M.

(*Amended by L. 1911, ch. 649, L. 1913, chs. 800, 821, L. 1915, ch. 678, and L. 1916, ch. 537, § 27, in effect May 15, 1916.*)

§ 158. **Registration in cities and in villages of five thousand inhabitants.**—In cities and villages having five thousand inhabitants or more, the names of such persons only as personally appear before the inspectors, and who are or will be at the election for which the registration is made, qualified electors, shall be registered for a general election, except that whenever any election district in a village having five thousand inhabitants or more shall embrace within its boundaries territory without the limits of such village, the inspectors shall, at their first meeting for registration for a general election, place upon such register the names of all persons appearing on the register of the last preceding general election who resided without the limits of such village but within the election district and who voted at such last preceding general election, except the names of such electors as are proven to the satisfaction of such inspectors to have ceased to be electors since such general election or to have moved within the limits of such village. They shall also place upon such register, at their first and subsequent meetings, the names of all other persons residing without the limits of the village and within such election district who may then appear before such inspectors and apply for registration and who are or who will be at the election for which the registration is made qualified electors, and also, at their first and subsequent meetings, the names of all persons not registered under the foregoing provisions who are known or proven to the satisfaction of the inspectors to be then or thereafter entitled to vote at such election and who reside within such election district but without the limits of such city or village. (*Amended by L. 1911, ch. 649, L. 1913, ch. 820, L. 1916, ch. 537, § 28, in effect May 15, 1916.*)

§ 159. **Registration elsewhere.**—At the first meeting for registration in any election district where only two meetings for the registration of voters are held for any general election, as provided in section one hundred and fifty of this article, the inspectors shall place upon the register the names of all persons who voted at the last preceding general election, as shown by the register or poll book of such election, except the names of such voters as are proven to the satisfaction of such inspectors to have ceased to be voters in such district since such general election. They shall also place upon the register at their first and second meetings the names of all other persons who then appear before such inspectors and apply for registration and who are or will be, at the election for which the registration is made,

L. 1916, ch. 537.

Records; transfer and custody.

§§ 182, 206.

qualified electors, and also, at their first and second meetings, the names of all persons not registered under the foregoing provisions who are known or proven to the satisfaction of the inspectors to be then or thereafter entitled to vote at such election. (*Amended by L. 1911, ch. 649, L. 1913, ch. 820, L. 1916, ch. 537, § 29, in effect May 15, 1916.*)

§ 182. Delivery of blank books for registration; certificates and instructions.—The secretary of state shall purchase whenever he deems it desirable for the best interests of the state, a suitable number of blank books for registers of voters, with blank certificates and brief instructions for registering the names of voters therein, in the forms respectively provided in sections one hundred and fifty-four and one hundred and fifty-five of this chapter, at least four of such books for each board of inspectors in the state, and such number of extra copies thereof as in his judgment may be necessary for each county or city to replace lost or damaged registers before delivery to the inspectors. Such register of voters shall have the leaves thereof indexed with the letters of the alphabet, beginning with the letter "A" for the first leaf, and so on. At least twenty days prior to the first day of registration for a general election in each year, the secretary of state shall transmit a sufficient number of such registers, certificates and instructions to the board of elections of each county, and to the board of elections of the city of New York located in the borough of Manhattan, and to the chief clerk of the branch office of the board of elections in each other borough within the city of New York, for the use of each board of inspectors within such counties and boroughs, respectively. The board of elections of each county, outside the city of New York shall deliver such books to the town clerks of each town and to the city clerk of each city in the county, by mail or otherwise, at least five days prior to the first day of registration, and such town clerks and city clerks, and the said board of elections and chief clerks of branch offices of the board of elections in the city of New York shall deliver such books to the inspectors of said towns, cities and boroughs, respectively, before the hour set for registering the names of voters on the first day of registration. On each day of registration the board of elections of the city of New York and of each county shall furnish to each board of inspectors in each such county or city, respectively, the blanks for the list of voters provided for in section one hundred and fifty-seven of this article. Such blanks shall be distributed in time and manner as above provided for the distribution for registers. (*Amended by L. 1916, ch. 537, § 30, in effect May 15, 1916.*)

§ 206. Transfer and custody of records; devolution and continuance of powers.—All books, documents, papers, records and election appliances or appurtenances now or heretofore held or used by or under the control of any officer or officers of any county or of any political subdivision thereof or therein, relating to or used in the conduct of general, special or primary elections, shall be transferred to or continue in the care, custody and control

§ 209a. Application of article to Oneida and Broome counties. L. 1916, ch. 454.

of the board of elections; and the said board of elections in any such county shall continue to be charged with the duty of performing each, every and all of the duties of the county clerk or commissioner of elections of said county, relating to elections heretofore devolved upon such board by the former provisions of this section, except as otherwise provided in this chapter. In the city of New York the board of elections shall continue to exercise the same powers and duties now exercised by it, excepting as otherwise provided in this chapter. All books, documents, papers, records and election appliances held or used by any commissioner or commissioners of election, in any county whose powers and duties have been heretofore terminated shall continue in the custody of the board of elections for such county. (*Added by L. 1911, ch. 649, and amended by L. 1916, ch. 537, § 31, in effect May 15, 1916.*)

§ 209-a. Article not applicable to Oneida and Broome counties; powers and duties of county clerks in such counties defined.—After this section takes effect the foregoing provisions of this article shall not apply to the counties of Oneida and Broome, excepting section one hundred and ninety-nine. For the purpose of applying such section, the county clerk in each of such counties shall be deemed a board of elections. In each of such counties, except as otherwise provided in this section, the county clerk shall have therein the powers and duties of a board of elections, as well as those of a county clerk, prescribed by this chapter or other statute, and references to such board shall be deemed to mean and include, with respect to any such county, the county clerk thereof. All books, documents, papers, records and election appliances or appurtenances held or used by or under the control of the board of elections in the county of Oneida or county of Broome, pursuant to the provisions of this chapter, shall, when this section takes effect, be transferred to the care, custody and control of the respective county clerks of such counties. Each such county clerk may adopt rules and regulations, not inconsistent with the provisions of this chapter, for conducting the business of his office in relation to carrying out the provisions of this chapter. The official papers, records and documents in the office of such county clerk from time to time relating to general, special or primary elections, or in his custody under any provision of this chapter, shall be public and open to inspection by any citizen of the state during office hours. The county clerk of each such county shall be the custodian of primary records of his county. Notwithstanding the provisions of any other statute, either general or local, the board of supervisors of Broome county may from time to time provide by resolution for the appointment by the county clerk of such county of additional assistants, at the expense of the county, in the office of such clerk, and the board of supervisors of Oneida county may in like manner provide for the appointment by the county clerk of Oneida county of two additional deputies representing each of the two political parties which at the last general election preceding such appoint-

L. 1916, ch. 7. Commissioner of elections in Monroe county. § 210.

ment cast the highest and the next highest number of votes for governor and of additional assistants, whenever such board of either county, respectively, shall determine that such deputies or assistants are necessary for the proper performance of the additional duties devolved upon such clerk by this section; but the aggregate compensation of such additional assistant appointed on account of such additional powers and duties in the county of Broome shall not exceed one thousand dollars annually, and of such deputies and assistants in the county of Oneida shall not exceed three thousand two hundred dollars annually, exclusive of necessary emergency employees. (*Added by L. 1916, ch. 454, in effect July 1, 1916.*)

L. 1916, ch. 454, § 3. The board of elections in each of the counties of Oneida and Broome is hereby abolished, and the terms of office of the members of any such board shall expire, and the powers, duties, offices and employment of such members and of the subordinates of such board shall cease and determine when this act takes effect. This act shall not affect any pending matter pertaining to the powers and duties of the board of elections of either of such counties under the election law, nor affect the running of time with respect to any matter or proceeding provided for in such law. Any such pending matter shall be continued and disposed of by the county clerk of the proper county.

ARTICLE 7-A

(Article added by L. 1916, ch. 7, in effect Feb. 21, 1916.)

COMMISSIONER OF ELECTIONS IN THE COUNTY OF MONROE

- Section 210. Commissioner of elections for Monroe county.
- 211. Appointment, qualifications and removal of commissioner.
 - 212. Appointment, removal and examination of inspectors of election, poll clerks and ballot clerks.
 - 213. Office for commissioner.
 - 214. Custody of records.
 - 215. Employees.
 - 216. Notices.
 - 217. Filing papers; general powers and duties of commissioner.
 - 218. Purchase of supplies, including voting machines; expenses of commissioner.
 - 219. Apportionment of expenses.
 - 220. Publication of notices.
 - 221. Polling places, election districts, et cetera.
 - 222. Voting machines.
 - 223. Construction of article.

§ 210. Commissioner of elections for Monroe county.—The office of commissioner of elections in the county of Monroe is hereby created, and all the rights, powers, authority, duties and obligations immediately heretofore by law vested in and imposed upon any officer or officers of the county of Monroe or any political subdivision thereof or therein, excepting the appointment, duties and obligations of inspectors of election, poll clerks and ballot clerks, who shall be appointed as hereinafter provided and serve as provided by law with respect to general or special elections and official

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primaries in the county of Monroe or in any political subdivision thereof or therein, except elections held at a time other than the time of the general election, or of village and school district officers, and special elections for town, village and school district purposes held at such other time, shall, by force of and as an effect of this article, be transferred to and be continued in the commissioner of elections in the county of Monroe hereby created from and after the time of appointment and qualification of the first commissioner hereunder. (*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*)

§ 211. Appointment, qualifications and removal of commissioner.—

Within five days after this article takes effect the county judge, special county judge and the surrogate of Monroe county, or a majority of them, shall appoint a commissioner of elections who must be a resident voter of such county and shall file in the office of the clerk of such county a certificate of the appointment. Such commissioner of elections shall take the constitutional oath of office and file the same in the county clerk's office and shall hold office for a term of four years; his successor to be appointed in like manner. Such term of office, except as otherwise provided in this section, shall begin on the first day of May in every fourth year, beginning with the year nineteen hundred and twenty. The term of the commissioner first appointed hereunder shall begin on the day the appointment is made and expire on May first, nineteen hundred and twenty. In case of a vacancy in the office of commissioner of elections, such county judge, special county judge and surrogate, or a majority of them, shall appoint a resident voter of Monroe county to fill such vacancy and shall file a certificate of such appointment in the office of the clerk of Monroe county. The person so appointed shall take the constitutional oath of office and serve the remainder of the term. The commissioner of elections appointed pursuant to this article shall be subject to removal by the governor in like manner as sheriffs of counties. Upon the appointment and qualification, pursuant to this section, of the first commissioner for such county, the board of elections therein shall be deemed abolished; and the terms of office of its members shall then expire. The provisions of article seven of this chapter shall not thereafter apply to the county of Monroe except section one hundred and ninety-nine; and the commissioner provided for herein shall be deemed a board of elections for the purpose of applying such section. (*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*)

§ 212. Appointment, removal and examination of inspectors of election, poll clerks and ballot clerks.—Inspectors of election, poll clerks and ballot clerks in and for the various election districts in the county of Monroe shall be appointed as follows: The chairmen of the county committees of the two political parties which at the last preceding general election of a governor cast the highest number of votes for governor shall each file with the commissioner of elections, on or before the first day of April of each year, a list of persons who are duly qualified to serve as inspectors of elec-

tion, poll clerks and ballot clerks. The commissioner of elections shall thereafter examine each person whose name appears on such lists as to their qualifications for such offices. Such commissioners shall give each person whose name appears on such lists not less than three days' notice of such examination. Such notice must be either written or printed and state the date, time and place such examination is to be held and must be sent either by mail or special messenger. Any person receiving the notice shall appear before such commissioner of elections at the place fixed for such examination at the time stated in the notice, and the said commissioner of elections shall examine such person as to his qualifications for the office of inspector of election, poll clerk or ballot clerk, as the case may be. Such examination may be either written or oral or both, and if the person so examined is found by the commissioner to be qualified and is, in the judgment of the commissioner a fit and proper person for such office, the commissioner or some person designated by him shall administer the constitutional oath of office and issue to him a certificate of appointment and he shall serve until his successor is appointed; but if such person is found disqualified or is, in the judgment of the commissioner, not a fit and proper person for such office, his name shall be stricken from the list. A supplemental list of persons for election officers may also be filed containing not more than ten names for each office. Additional supplemental lists for any election district may be filed at any time before the appointments for such district are made, or when a vacancy shall exist for any cause, and all appointments shall be made from the original list if those named therein are found disqualified as herein provided; if not so qualified, then from a supplemental list so filed. If no list is filed by a party, and if within three days after notice in writing by the commissioner to the chairman of the county committee of such party, no list is filed, the commissioner of elections may appoint qualified persons, members of the party in default, to act as election officers, and the enrollment of such person shall be sufficient evidence of the party affiliation of such person. If a qualified person cannot be obtained for any election office from the list or lists filed by a party, and if within three days after notice in writing by the commissioner of elections to the chairman of the county committee of such party, an additional list is not filed containing the name or names of one or more qualified persons, the commissioner of elections may fill such office by the appointment of a qualified person, a member of the party in default. The commissioner of elections shall from time to time, as he may deem necessary, hold a school for the instruction of inspectors of election and poll clerks. Such school shall not be held at any hour earlier than seven o'clock in the evening, and notice shall be given by the commissioner to each inspector of election and poll clerk stating the time and place such school will be held. The notice shall be by mail and either written or printed. If any inspector of election or poll clerk shall fail to attend such school after receiving notice thereof, the commissioner may remove him from office and fill the vacancy

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in the manner provided for in this article. Each election officer shall be paid one dollar for the time spent in attending a school of instruction, and the election officers of the towns of Monroe county, if such school be held at any place outside the town in which they respectively reside, shall be paid in addition the car fare going and returning from the school. The money due an election officer for attending a school of instruction shall be paid at the same time and in the same manner as the pay for his other services. The commissioner of elections shall have the power on any day of election, registration or primary election to remove from office forthwith any inspector of election, poll clerk or ballot clerk for intoxication or failure to perform his duty in a satisfactory manner and to make a temporary appointment to fill the vacancy caused by such removal. (*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*)

§ 213. **Office for commissioner.**—It shall be the duty of the board of supervisors of Monroe county to provide an office for such commissioner of elections suitable for the preservation of the records of said office and for the doing of the work devolved upon such commissioner under and by reason of this article and the necessary furniture thereof. The expense of providing and furnishing such office shall be a county charge and be audited and paid as other county expenses are paid. (*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*)

§ 214. **Custody of records.**—All books, documents, papers, records and election appliances or appurtenances held or used by or under the control of any officer or officers of Monroe county or of any political subdivision thereof or therein and relating to or used in the conduct of general or special elections or official primaries, including voting machines used and owned by any political subdivision of Monroe county shall, upon request of the commissioner of elections be transferred to the care, custody and control of such commissioner. (*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*)

§ 215. **Employees.**—The commissioner of elections may appoint such employees as the board of supervisors of Monroe county shall by resolution from time to time authorize, and such employees shall receive such salaries and compensation as such board shall by resolution fix and determine. Each employee shall perform such duties as the commissioner of elections shall prescribe and shall hold office at the pleasure of such commissioner. The salary of the commissioner of elections of Monroe county shall be three thousand dollars per annum. Such salaries and compensation shall be paid in the same manner as the salaries of the county officers are paid. (*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*)

§ 216. **Notices.**—All notices which are now or which hereafter may be required by law to be given by the secretary of state or any other officer to any officer of Monroe county or of any political subdivision thereof or

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therein relating to the holding of any election or official primary, and stating the officers to be elected or nominated or party positions to be filled thereat, or the questions to be voted upon by the people from and after the appointment and qualification of the first commissioner hereunder shall be communicated by the secretary of state or other officer to the commissioner of elections of Monroe county. (*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*)

§ 217. **Filing papers; general powers and duties of commissioner.**—All certificates of nomination for office to be voted for by the electors of Monroe county or any political subdivision thereof or therein at any election to which this article applies, all declinations of nominations for office, all certificates of nomination to fill vacancies caused by such declinations or by death, all designations, all declinations of designations, all certificates of designations to fill vacancies caused by such declinations, all statements of candidates' expenses, expenses of election or nomination, and all rules and regulations of political parties otherwise required by law to be filed with any officer of Monroe county or any political subdivision thereof or therein, shall be filed in the office of the commissioner of elections hereby established, and such commissioner shall be the custodian of primary records for Monroe county and secretary of the county board of canvassers. The office of the commissioner shall be public and open on every business day of the year, during such reasonable hours as the commissioner shall designate. The commissioner may adopt rules and regulations for the conduct of his office, not inconsistent with this chapter. The official papers, records and documents of his office shall be public and open to inspection by any citizen of the state during office hours. Except as otherwise provided in this article, such commissioner shall have the powers and duties of a board of elections prescribed by this chapter or other statute and references to such board shall be deemed to mean and include such commissioner. (*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*)

§ 218. **Purchase of supplies, including voting machines; expenses of commissioner.**—When the common council of any city, the town board of any town or the board of trustees of any village in the county of Monroe shall have adopted voting machines, the commissioner of elections shall direct the purchase of the number of machines authorized by such local authorities, and may thereafter, when authorized by such local authorities, direct the purchase of new or additional machines for such city, town or village. The commissioner may direct the purchase of any kind of voting machines approved by the state board of voting machine commissioners or the use of which has been specifically adopted by law. All supplies or election appliances to be used or furnished by the commissioner of elections for election purposes shall be purchased by the purchasing agent of Monroe county as other county supplies are purchased. The commissioner is hereby authorized to cause all necessary repairs and alterations to be made and em-

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ploy such help as may be necessary in making such repairs and in moving, setting up and caring for all election materials and appliances. All expenses for supplies, advertising, posting and circulation of election notices and printing lists of registered voters and other expenses arising from the conduct of elections in Monroe county or in any political subdivision thereof or therein, incurred by or under the direction of the commissioner of elections except the compensation of inspectors of election, poll clerks and ballot clerks, shall hereafter be a charge against the county or political subdivision thereof or therein, as specified in this chapter and shall be certified by the commissioner of elections and audited and paid as are other claims against such county; provided, however, that any city, town or village may, upon request of the local authorities, assume the payment of the cost of purchasing voting machines and shall have the power to issue bonds, certificates of indebtedness or other obligations which shall be a charge on the city, town or village, payable at such time or times as such authorities may determine, issued with or without interest and not issued or sold at less than par. (*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*)

§ 219. **Apportionment of expenses.**—Such commissioner of elections shall, on or before the first day of October in each year, certify to the clerk of the board of supervisors of Monroe county the total amount of the expenses of his office, including salaries for the preceding year, and shall certify to such clerk the portion of such expenses which under the provisions of law is to be borne by the county at large and the portions thereof which are to be borne by each political subdivision thereof or therein, and the clerk of such board in spreading taxes levied upon taxable property of such county or any political subdivision thereof or therein shall include in the amount spread upon the county at large and the political subdivision thereof or therein the amount so certified by the commissioner to be borne by the county at large or the political subdivision respectively. (*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*)

§ 220. **Publication of notices.**—All publications, advertising or posting of election notices required by law relating to general and special elections or official primaries to which this article applies and all notices of such elections or primaries as are required by law to be published, advertised or posted shall be published, advertised or posted by the commissioner of elections. (*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*)

§ 221. **Polling places, election districts, et cetera.**—It shall be the duty of the commissioner of elections at least thirty days before each primary day to fix the polling places for each primary district in Monroe county and on or before the first Tuesday in September in each year to fix the polling places for registration and election in each election district in Monroe county. It shall be the duty of the commissioner to create, alter or divide the various political subdivisions of Monroe county into election districts as

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provided for in sections two hundred and ninety-six and four hundred and nineteen of this chapter. Whenever the commissioner shall have created, altered or divided the election districts in any political subdivision of Monroe county he shall execute a certificate giving the boundaries of the new districts and file it in his office and make and file a copy thereof in the office of the city or town clerk, as the case may be, and also publish a description of such boundaries once in the paper designated to publish election notices. (*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*)

§ 222. **Voting machines.**—It shall be the duty of the commissioner of elections to cause the proper ballot labels to be placed on voting machines, and to cause the machines to be placed in proper order for voting and to examine all voting machines before they are sent out to the different polling places, and see that all the registering counters are set at zero (000), and lock all voting machines so that the counting machinery cannot be operated, and seal each one with a numbered metal seal. The commissioner of elections may appoint a custodian of voting machines who shall, under the direction of the commissioner of elections, have charge of and represent the commissioner of elections during the preparation of the voting machines and serve at the pleasure of the commissioner, but not to exceed forty days for any one election. Before preparing a voting machine for an election written notice shall be mailed to the chairmen of the county committees of the two political parties which polled the greatest number of votes at the last preceding election of a governor, stating the time and place where the machines will be prepared; at which time and place one representative of each of such political parties, certified by the respective chairmen of the county committees of such parties, shall be entitled to be present and see that the machines are properly prepared and placed in proper condition for use at election. The custodian of voting machines and the party representatives shall take the constitutional oath of office and shall be paid five dollars for each day so employed, which shall be paid in the same manner as the salaries of county officers are paid. It shall be the duty of such representatives to be present at the preparation of voting machines for election and to see that the machines are properly prepared and that all the registering counters are set at zero (000). When a machine has been prepared for election it shall be the duty of such representatives to make a certificate in writing, which shall be filed in the office of the commissioner of elections, stating the number of the machine, whether or not all of the counters are set at zero (000), the number registered on the protective counter, if one is provided, and the number on the metal seal with which the machine is sealed. Such representatives shall perform their duties under the direction of the commissioner. It shall be the duty of the commissioner to cause the voting machines to be delivered at the respective polling places in which they are to be used at least one hour before the time set for the opening of the polls. (*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*)

§ 223. **Construction of article.**—Nothing in this article shall be construed to affect or limit the powers of the board of supervisors of Monroe county or the town board of any town, or the village trustees of any village, in such county, as boards of canvassers for the county, towns and villages respectively. Nor shall this article apply to elections held in cities, towns or villages where elections are held at a time other than at the time of general elections. Where the provisions of this article are inconsistent with other provisions of this chapter or other statutes, the provisions of this article shall be controlling. (*Added by L. 1916, ch. 7, in effect Feb. 21, 1916.*)

§ 292. **Filling vacancies in elective offices.**

Power of Governor to call special elections.—The provision which limits the power of the Governor to call an election when vacancies occur within the term, to cases where the office "cannot be filled by appointment" does not refer to a failure to elect before the term begins. *Atty. Genl. Opin., 6 State Dep. Rep. 416 (1915).*

The Governor may, in his discretion, under the provisions of this section, proclaim a special election to fill the office of supervisor in the wards of a city of the second class, where there has been a tie vote. *Atty. Genl. Opin., 6 State Dep. Rep. 416 (1915).*

§ 294. **Notice of submission of proposed constitutional amendment.**

Proposed amendments to the Constitution cannot be submitted, under this section, where the Legislature has erroneously directed that they be referred to the Legislature to be chosen at the next general election. *Atty. Genl. Opin., 4 State Dep. Rep. 535 (1915).*

§ 296. **Creation, division and alteration of election districts.**—Every town or ward of a city not subdivided into election districts shall be an election district. The town board of every town containing more than four hundred voters and the common council of every city except New York and Buffalo, in which there shall be a ward containing more than four hundred voters, shall, on or before the first day of July in each year, whenever necessary so to do, divide such town or ward respectively into election districts, to take effect on the sixth Wednesday before the general election in such year, each of which shall be compact in form, wholly within the town or ward, and shall contain respectively as near as may be, three hundred voters, but no such ward or town shall be again divided into election districts until, at some general election, the number of votes cast in one or more districts thereof shall exceed three hundred and fifty; and in such case the redivision shall apply only to the town or ward in which such district is situated; provided, however, that in cities of the third class the common council, or other board or body charged with like duties, by resolution duly adopted at the time and to take effect as hereinbefore provided for the division of wards into election districts, may direct that wards in such city having five hundred and fifty voters or less shall not be divided but shall constitute one election district; or, that wards having five hundred voters or less, which have been divided into election districts pursuant to

the foregoing provisions of this section, shall be consolidated into one election district. Such resolution shall fix and determine the polling place for such election district or consolidated districts and in all such cases it shall be the duty of the common council, or other board or body charged with like duties, to furnish such polling place with one booth for each seventy-five voters in such election district or consolidated districts, as shown by the last preceding registration of voters in such ward. If any part of a city shall be within a town, the town board shall divide into election districts only that part of the town which is outside of the city. No election district including any part of a city shall include any part of a town outside of a city.

A town or ward of a city containing less than four hundred voters or an election district of a town containing less than three hundred voters may, in any year not later than the first day of July, be divided into election districts by the board or other body charged with such duty, to take effect on the sixth Wednesday before the general election in such year, when, in the judgment of such board or body, the convenience of the voters shall be promoted thereby. Upon the creation, division or alteration of an election district outside of a city, and on or before September first the town board shall appoint four inspectors of election for each election district so created, divided or altered, to take effect on or before the first day of registration thereafter and not earlier than the second Wednesday following the next fall primary, who shall be equally divided between the two parties entitled to representation on boards of inspectors. If the creation, division or alteration of an election district is rendered necessary by the creation, division or alteration of a town, ward or city or rendered necessary or occasioned by the division of a county into assembly districts after a reapportionment by the legislature of members of assembly, such creation, division or alteration of an election district shall be made and shall take effect immediately; and inspectors of election for the new election districts as so created, divided or altered shall be appointed, in the manner provided by law, a reasonable time before the next official primary or meeting for registration and such appointments shall take effect immediately. If a town shall include a city, or a portion of a city, only such election districts as are wholly outside of the city shall be deemed election districts of the town, except for the purpose of town meetings.

The board of elections of the city of New York and county of Erie shall divide the cities of New York and Buffalo, respectively, into election districts on or before the first day of July in any year whenever necessary so to do as herein provided, to take effect on the sixth Wednesday before the general election in such year. Each election district in the counties within the city of New York shall contain, so far as possible, four hundred voters, provided, however, that any election district containing less than two hundred voters, in such counties, made necessary by the crossing of congressional lines with other political divisions, may be consolidated with a con-

tiguous election district in any year when no representative in congress is to be voted for in such district. Such election districts so established in the city of New York shall not again be changed until at some general election the number of registered voters therein shall exceed four hundred and fifty, except where changes are made necessary by a change in the boundaries of congressional, senate, assembly, aldermanic or municipal court districts or ward lines, provided, however, that when the number of registered voters in an election district shall, for two consecutive years, be less than two hundred, such district may be consolidated with a contiguous election district in the discretion of said board of elections. In the city of New York each election district shall be compact in form, entirely within an assembly district and numbered in consecutive order therein respectively. In the year nineteen hundred and sixteen, following the decennial reapportionment, the board of elections of the city of New York shall rearrange the election districts throughout the city within assembly district lines, to conform as to the number of voters to the provisions of this section, which rearrangement shall take effect before the fall primary in that year; and the appointment of inspectors of election for such election district, as altered or newly created, shall be made and shall take effect a reasonable time before such primary.

No election district shall contain portions of two counties, or two senate or assembly districts. (*Amended by L. 1914, ch. 244, and L. 1916, ch. 537, § 32, in effect May 15, 1916.*)

§ 297. Abolition, consolidation or changing of election districts in towns.—If at a general election at which a governor is elected, the number of votes cast for governor in an election district in any town be less than two hundred, the town board of the town may, if such town contains two election districts, abolish the division of the town into election districts, or if the town contain more than two election districts, may annex the territory of such district to one or more of the other districts therein, in such manner as will best promote the convenience of the voters; but no district shall be abolished pursuant to this section if thereby in case of the abolition of election districts, the number of voters in the town will exceed four hundred, as indicated by the last preceding vote for governor, or thereby in the case of the abolition of an election district and its annexation to one or more other districts, the number of voters in any new district so created will exceed three hundred and fifty as indicated by such vote. An alteration of election districts, pursuant to this section, must be made on or before July first in any year, to take effect on the sixth Wednesday before the general election in such year. If the election districts in a town are abolished pursuant to this section, the town board shall, on or before September first, appoint from the inspectors of election in such town four inspectors of election for the town as an election district, to take effect on or before the first day of registration thereafter and not earlier than the second Wed-

L. 1916, ch. 537.

Publication of lists of registration, etc.

§§ 299, 301.

nesday following the next fall primary, who shall be equally divided between the two parties entitled to representation on boards of inspectors.

If a town has been divided into three or more election districts, and if at any general election at which a governor is elected, the number of votes cast for governor in any district in such town does not exceed two hundred, the town board of such town may on or before the first day of August succeeding, if it deems that the convenience of voters will be promoted thereby, divide such town into such number of election districts, to take effect on the sixth Wednesday before the next general election, as it deems desirable, or change the boundaries of the existing districts, in such manner that no district shall contain more than three hundred voters as indicated by the last preceding vote for governor. If, in pursuance of this section, the boundaries of an election district in such town should be changed, or a new election district is created by the consolidation of two or more districts or parts of districts, the town board shall on or before September first appoint for each such district so created, or changed, four inspectors of election, to take effect on or before the first day of registration thereafter and not earlier than the second Wednesday following the next fall primary, who shall be equally divided between the two parties entitled to representation on boards of inspectors. Such inspectors of election shall hold office until their successors are regularly elected in such election districts, in pursuance of law. (*Amended by L. 1914, ch. 244, and L. 1916, ch. 537, § 33, in effect May 15, 1916.*)

§ 299. Designation of places for registry and voting.—*Subd. 1 as amended by L. 1910, ch. 428, and L. 1915, ch. 678, amended by L. 1916, ch. 537, § 34, in effect May 15, 1916, as follows:*

1. On the first Tuesday of September in each year, the town board of each town, and the common council of each city, except Buffalo, and the board of elections of the city of New York, shall designate the place in each election district in the city or town at which the meeting for the registration of voters and the election shall be held during the year; provided, however, that in the city of New York the place so designated, if a schoolhouse or other public building, may be in a contiguous election district. In the city of Buffalo the board of elections of the county of Erie shall designate such places for registry and election on the first Monday in August in each year.

§ 301. Publication of list of registration and polling places.—The officers authorized to designate the registration and polling places in any city, except the city of New York, shall cause to be published in two newspapers within such city a list of such places so designated, and the boundaries of each election district in which such registration and polling place is located and shall at the same time file said list with the state superintendent of elections. Such publication shall be made in the newspapers so selected upon each day of registration and the day of election, except that

if such newspaper be an evening newspaper it shall be made on the day prior to each of such days. One of such newspapers so selected shall be one which supports the candidates nominated that year by the political party polling the highest number of votes in the state at the last preceding election for governor, and the other newspaper so designated shall be one which supports the candidates nominated that year by the political party polling the next highest number of votes for governor at said election.

The board of elections of the city of New York shall cause to be published in two newspapers in each borough within such city a list of the registration and polling places so designated in each borough and the boundaries of each election district therein in which such registration and polling place is located and shall at the same time file said list with the state superintendent of elections; except that in the borough of Brooklyn, such publication shall be made in the newspapers designated to publish corporation notices therein and in one daily newspaper published in the Jewish language; and except also that in the borough of the Bronx such publication shall be made in four newspapers published in the borough of the Bronx; and except also that in the borough of Manhattan such publication shall be made in five daily newspapers published in the borough of Manhattan which support the candidates nominated that year by the political party polling the highest number of votes in the state at the last preceding election for governor, and also in five daily newspapers published in the borough of Manhattan which support the candidates nominated that year by the political party polling the next highest number of votes for governor at said election, one of which newspapers may be a daily newspaper published in the German language and two of which newspapers may be daily newspapers published in the Jewish language; which publication shall include the list of such registration and polling places and their boundaries, in the respective counties in which the newspapers are published. Such publication shall be made in such newspapers upon each day of registration and the day of election excepting if such newspaper be an evening newspaper it shall be made on the day prior to each of such days or if such day be Sunday, on the preceding Saturday. Such publications shall be made in newspapers published in such boroughs which shall respectively support the candidates nominated that year by the political parties which at the last preceding election for governor respectively cast the largest and next largest number of votes in the state for such office.

The said board shall also cause to be published in the City Record on or before the first day of registration in each year a complete list of all the registration and polling places so designated and the boundaries of the election districts in which such places are located arranged in numerical order under the designation of the respective boroughs in which they are located.

In selecting the newspapers in which such publications are to be made the said board shall keep in view the object of giving the widest publicity

L. 1916, ch. 537.

Ballots; forms; classification.

§§ 302, 320, 331.

thereto. (*Amended by L. 1913, ch. 587, L. 1914, ch. 238, and L. 1916, ch. 537, § 35, in effect May 15, 1916.*)

§ 302. Election officers.

On the merger of a village and towns to form a city the Legislature may direct the trustees of the village to appoint the necessary election officers to hold and carry out the ensuing election of city officials, the appointment to be made on a bipartisan basis. *People ex rel. Haight v. Brown* (1915), 169 App. Div. 695, 155 N. Y. Supp. 564.

§ 320. Delivery of election laws to clerks, boards and election officers.—

The secretary of state shall at least sixty days before each general election cause to be prepared a compilation of the election law with explanatory notes and instructions, properly indexed, and procure the same to be printed by the legislative printer, and transmit to the board of elections of each county, and to the board of elections of the city of New York, located in the borough of Manhattan, and to the branch office of the board of elections in each of the other boroughs of the city of New York, a sufficient number of copies thereof to furnish one such copy to each member of each such board and to each of said branch offices of the board of elections of the city of New York and one to each county, town, village and city clerk and to each election officer in any such county and said boroughs, together with such number of extra copies as may in his judgment be necessary to replace copies lost or mutilated before delivery thereof to election officers.

The board of elections of each county, except those counties the whole of which is included within the city of New York, shall forthwith transmit one of such copies to each of such officers in such county, and the board of elections of the city of New York shall cause to be delivered one of such copies to each of such officers in the city of New York. Each copy so received by each such officer shall belong to the office of the person receiving it. Every incumbent of the office shall preserve such copy during his term of office and upon the expiration of his term or removal from office deliver it to his successor. The secretary of state shall also transmit to the state superintendent of elections a sufficient number of such copies to furnish one of such copies to the superintendent and to each deputy. (*Amended by L. 1916, ch. 537, § 36, in effect May 15, 1916.*)

§ 331. Classification of ballots; form of ballots for candidates.—1. General provisions. There shall be five kinds of ballots, called respectively ballots for presidential electors, ballots for general officers, ballots upon constitutional amendments and questions submitted, ballots upon town propositions, and ballots upon town appropriations, which shall be used for the purposes which their names severally indicate and not otherwise. Ballots for general officers shall contain the names of all candidates except presidential electors. All ballots shall be printed in black ink, on book paper of good quality free from ground wood, five hundred sheets of which twenty-five by thirty-eight inches in size shall weigh sixty pounds and shall test for that size and

weight at least twenty points on a Morrison tester. They shall be rectangular in shape, not less than eight inches in width and twelve inches in length, and shall have a margin extending beyond any printing thereon.

All ballots of the same kind for the same polling place shall be of precisely the same size, quality and shade of paper, and of precisely the same kind and arrangement of type and tint of ink. A different, but in each case uniform, kind of type shall be used for printing the names of candidates, the titles of offices, political designations, and the reading form of constitutional amendments and other questions and propositions submitted. The names of candidates shall be printed in capital letters in black-faced type not less than one-eighth nor more than three-sixteenths of an inch in height.

Each ballot shall be printed on the same sheet with a stub and shall be separated therefrom by a horizontal line of perforations extending across the entire width of the ballot. On the face of the stub shall be printed the instructions to voters hereinafter provided. On the back of the stub, immediately above the center of the indorsement on the back of the ballot hereinafter referred to, shall be printed "No.," the blank to be filled with the consecutive number of the ballot, beginning with "No. 1," and increasing in regular numerical order.

On the back of the ballot, below the line of perforations, just to the right of the center, and outside when the ballot is folded, shall be printed the following indorsement, the blanks being properly filled and the numbers running from one upward, consecutively:

Official ballot (for presidential electors).
 County of.....
assembly district (ward or town).
election district.
 (Date of election.)

(Facsimile of the signature of officer causing the ballot to be printed).

Each ballot shall be printed in sections, on which the candidates' names, emblems and political designations, or the constitutional amendment, or other question submitted, with the voting squares, and other requisite matter shall be boxed in by heavy black lines in the manner indicated in the illustration of the ballot hereinafter provided. The voting squares and the spaces occupied by emblems shall have a depth and width of five-sixteenths of an inch.

In case the sections shall be so numerous as to make the ballot unwieldy if they are printed in one column, they may be printed in as many columns as shall be necessary, and in that case, in order to produce an exactly rectangular ballot, blank sections may be used.

On each ballot shall be voting squares in which voters may make their voting marks. All voting squares shall be bounded by heavy black lines, the perpendicular lines to be not less than one-sixteenth of an inch wide.

L. 1916, ch. 537.

Ballots; forms; classification.

§ 331.

In all ballots there shall be a perpendicular column of these squares, and in the ballot for general officers, in the case of a candidate for governor or member of assembly nominated by two or more political organizations, the additional squares arranged horizontally as provided in subdivision three of this section. No voting squares shall be provided in the blank spaces for written names.


The ballots bearing the same number at the same election shall constitute a set of ballots.

Each political organization whose party name contains more than eleven letters shall select an abbreviated form thereof containing not more than eleven letters which shall be used upon the ballot whenever the necessities of space shall so require. The abbreviated form shall be certified at the same time and in the same manner as party names are required to be certified. In printing the names of candidates whose full names contain sixteen letters or more not more than one name other than the surname shall be printed in full, and each candidate may indicate in writing to the officer or officers charged with the duty of preparing the ballots the form in which, subject to this restriction, his name shall be printed. No emblem shall occupy a space longer in any direction than the voting square to which it relates.

In conformity with the foregoing provisions and with the provisions of subdivision three of this section the face of the ballot for general officers shall be substantially in the following form:

[Face of ballot]

1. To vote for a candidate on this ballot make a single cross X mark in one of the squares to the right of an emblem opposite his name.
2. To vote for a candidate NOT on this ballot write his name on a blank line under the candidates for that office.
3. Mark only with a pencil having black lead.
4. Any other mark, erasure or tear on this ballot renders it void.
5. If you tear, or deface, or wrongly mark this ballot, return it and obtain another.

 Vote for one!	GOVERNOR	1
JERRY COLLINS	Republican Prohibition Social Labor	
HOSEA CLARK	Democratic	
WILLIAM HIGGS	Progressive Ind. League	
PAUL PRY	Liberal	

 Vote for one!

LIEUTENANT GOVERNOR

2

PERRY PRINDLE

 Republican
 Prohibition
 Social Labor

RALPH HUNTER

Democratic

JOHN SMITH

Progressive

PATRICK DOYLE

Ind. League

HENRY SPENCER

Liberal

2. Ballots for presidential electors. The names of the presidential electors of each party shall be printed in one column indicating:

First. The electors at large, whose names shall be arranged in the alphabetical order of the surnames; and

Second. The electors of each district, whose names shall be arranged in the numerical order of their district.

The columns shall be parallel to each other and shall be separated by heavy black lines. In addition to the party columns a blank column with lines for writing shall also be provided in which voters may write the names of candidates for presidential electors not on the ballot and which shall be sufficient to contain as many names as there are electors to be chosen. It shall be designated as the blank column and shall contain no voting spaces. At the head of each party column shall be printed the party emblem; below this a blank circle three-quarters of an inch in diameter; below this the party name in large type; below this the names of the candidates for president and vice-president; and below this a heavy line dividing the heading from the names of the presidential electors. Above the name of the first elector shall be printed the words "presidential electors." The names of the presidential electors shall be printed in spaces one-quarter of an inch in depth, except that the first space containing also the words "for presidential electors" shall be half an inch in depth. The spaces shall be divided from each other by light horizontal lines. At the left of the name of each elector shall be printed a voting space one-quarter of an inch square, except the space opposite the first name, which shall be half an inch in depth.

Each party circle shall be surrounded by the following instructions, plainly printed: "For a straight ticket, mark within this circle."

The columns for the presidential electors of independent bodies shall be

similar to the party columns except that above the emblem in each column shall be printed the words "independent nominations" in large type like that used for the party names.

In the blank column the space occupied by the emblem and voting circle in the party column shall be occupied by the following instructions, plainly printed: "In the column below, the voter may write the name of any person for whom he desires to vote whose name is not printed on the ballot." Below the line dividing the heading from the blank spaces shall be printed, as in the other columns, the words "presidential electors."

The columns shall be arranged upon the ballot as directed by the secretary of state, precedence, however, being given to the several parties according to the number of votes for governor polled at the last preceding gubernatorial election.

On the stub at the top of the ballot shall be printed in heavy black type the following instructions:

"1. To vote for all the electors of one party make a cross X mark within the circle above the party column.

2. To vote for some, but not all, of the electors of one party make a cross X mark in the square at the left of the name of every candidate printed on the ballot for whom you desire to vote.

3. To vote for any candidate not on the ballot write his name in the blank space provided therefor.

4. Mark only with a pencil having black lead.

5. Any other mark or any erasure or tear on the ballot renders it void.

6. If you tear, or deface, or wrongly mark this ballot, return it and obtain another."

3. Ballots for general officers. The names of all candidates for any one office shall be printed in a separate section, and the sections shall be in the customary order of the offices and shall be numbered from one upward by a numeral printed in the upper right hand corner of the section. The names of candidates shall be printed in their appropriate section in such order as the board of elections may direct, precedence, however, being given, except as herein otherwise provided, to the candidate of the party which polled the highest number of votes for governor at the last preceding election for such officer, and so on. At the top of each section in the center shall be printed on one line the title of the office. On the same line, to the left of such title and immediately above the emblems and voting squares, there shall be printed a direction as to the number of candidates for whom a vote may be cast, which direction shall be punctuated by an exclamation point. If two or more candidates are nominated for the same office for different terms, the term for which each is nominated shall be printed as a part of the title of the office. At the bottom of each section as many separate spaces as there are candidates to be elected shall be left blank in which the voter may write the names of any candidates not on the ballot. Except as herein otherwise provided

with respect to a candidate for the office of governor or of member of assembly who is nominated by more than one political organization, there shall be printed on each line below the top, in the following order, from left to right, the party emblem, the voting square, the candidate's name and the name of the party by which he is nominated. The width of the enclosure containing the name of the candidate and of such party shall not exceed three and one-half inches. In any case where a candidate for public office is nominated by more than one political organization, the party names and emblems shall appear in the order of priority based on the relative number of votes cast for governor by each organization at the preceding election of a governor. In any such case, the emblems shall be arranged horizontally before the voting square, beginning next to the square immediately preceding the name of the candidate with the emblem of the party casting the highest number of such votes. When any candidate for the office of governor or member of assembly is nominated by more than one political organization, there shall be one voting square, in the same horizontal row as the emblems, to the right of each emblem before the name of a candidate so nominated for such office. The final letter of the party name or names shall be close to the right hand perpendicular line of the box, and any space between the candidate's name and his party name or names shall be filled with dotted or waved lines.

On the stub at the top of the ballot shall be printed the following directions to the voter:

1. To vote for a candidate on this ballot make a single cross X mark in one of the squares to the right of an emblem opposite his name.
2. To vote for a candidate not on this ballot write his name on a blank line under the candidates for that office.
3. Mark only with a pencil having black lead.
4. Any other mark, erasure or tear on this ballot renders it void.
5. If you tear, or deface, or wrongly mark this ballot, return it and obtain another.

In direction number one the words "right" and "emblem" shall be underlined. (*Added by L. 1913, ch. 821, and amended by L. 1914, chs. 87, 244, and L. 1916, ch. 537, in effect May 15, 1916.*)

§ 333-a. **Additional sample ballots in the year 1914.**—*Added by L. 1914, ch. 243, and repealed by L. 1916, ch. 537, § 38, in effect May 15, 1916.*

§ 341. **Officers providing ballots and stationery.**—The county clerk, in each of the counties of Oneida and Broome, the commissioner of elections in any county having one commissioner of elections, the board of elections in every other county except a county within the city of New York, and in any such county the board of elections of such city, shall provide the requisite number of official and sample ballots, cards of instruction, two poll books, distance markers, two tally sheets of each kind, three return blanks of each kind, pens, penholders, red and black ink,

L. 1916, ch. 537.

Distribution of ballots and stationery.

§ 343.

pencils having black lead, blotting paper, sealing wax and such other articles of stationery as may be necessary for the proper conduct of the election and the canvass of the votes, for each election district in the county, for each election to be held thereat, except that when town meetings, city or village elections and elections for school officers are not held at the same time as a general election, the clerk of such town, city or village, respectively, shall provide such official and sample ballots and stationery for such election or town meeting. If the town meeting is held on general election day ballots and sample ballots for town propositions and official and sample general ballots on which town officers only are to be voted for shall be provided by the town clerk in like manner and in the same form as at a town meeting held at any other time, and such town clerk shall also furnish return blanks for making returns on town propositions or questions and for making returns of votes cast for candidates for town offices at such an election, and the expense of furnishing such ballots, sample ballots and return blanks shall be a town charge. And the board of elections of the city of New York shall provide such articles for each election to be held in said city. (*Amended by L. 1911, ch. 649, L. 1913, ch. 821, and L. 1916, ch. 454, in effect July 1, 1916.*)

Application.—Under the provision that boards of election shall provide ballots for all elections except those at town meetings held at times other than a general election, the exception has no application to a town meeting held at the same time as a general election, and ballots furnished for a local option election thereat are valid. *Matter of Town of Bath (1916)*, 93 Misc. 575, 157 N. Y. Supp. 205.

§ 343. **Distribution of ballots and stationery.**—The board of elections of each county, except those counties which are wholly within the city of New York, shall deliver at its office to each town or city clerk in such county, except in New York city and in the city of Buffalo, on the Saturday before the election for which they are required, the official and sample ballots, cards of instruction and other stationery required to be provided for each polling place in such town or city for such election. It is hereby made the duty of each such town or city clerk to call at the office of such board of elections at such time and receive such ballots and stationery. In the cities of New York and Buffalo the board or officer required to provide such ballots and stationery shall cause them to be delivered to the board of inspectors of each election district at least one-half hour before the opening of the polls on each day of election. Each kind of official ballots shall be arranged in a package in the consecutive order of the numbers printed on the stubs thereof, beginning with number one. All official and sample ballots provided for such election shall be in separate sealed packages, clearly marked on the outside thereof with the number and kind of ballots contained therein and indorsed with the designation of the election district for which they were prepared. The instruction cards and other stationery provided for each election district shall also be inclosed in a sealed package or packages, with a label on the out-

side thereof showing the contents of each such package. Each such town and city clerk receiving such packages shall cause all such packages so received and marked for any election district to be delivered unopened and with the seals thereof unbroken to the inspectors of election of such election district one-half hour before the opening of the polls of such election therein. The inspectors of election receiving such packages shall give to such town or city clerk, or board, delivering such packages a receipt therefor specifying the number and kind of packages received by them, which receipt shall be filed in the office of such clerk or board. Town, city and village clerks required to provide the same for town meetings, city and village elections held at different times from a general election, shall in like manner, deliver to the inspectors or presiding officers of the election at each polling place at which such meetings and elections are held, respectively, the official ballots, sample ballots, instruction cards and other stationery, required for such election or town meeting, respectively, in like sealed packages marked on the outside in like manner, and shall take and file receipts therefor in like manner in their respective offices. (*Amended by L. 1916, ch. 537, § 39, in effect May 15, 1916.*)

§ 344. **Errors and omissions in ballots.**—Upon affidavit, presented by any voter, that an error or omission has occurred in the publication of the names or description of the candidates, nominated for office, or in the printing of sample or official ballots, the supreme court, or a justice thereof, may make an order requiring the board of elections or other officer or board charged with the duty in respect to which such error or omission occurs to correct such error, or show cause why such error should not be corrected. The board of elections or such other officer or board shall, upon his own motion, correct without delay any patent error in the ballots which they may discover, or which shall be brought to their attention, and which can be corrected without interfering with the timely distribution of the ballots to the inspectors for use at such election. (*Amended by L. 1916, ch. 537, § 40, in effect May 15, 1916.*)

§ 352. **Watchers; challengers; electioneering.**

The Secretary of State has no authority to appoint watchers for any political party or independent body. *Atty. Genl. Opin. (1915), 4 State Dep. Rep. 551.*

Woman watchers.—Suffragists and anti-suffragists having club or committee organizations in a county, city, town or village, may appoint and have present at the polling places one woman watcher for each faction at all elections at which a woman suffrage constitutional amendment is to be submitted, but a male elector may not be appointed to act for either of the factions. *Atty. Genl. Opin. (1915), 4 State Dep. Rep. 551.*

§ 355. **General duties of poll clerk.** 1. Poll clerks shall keep a record of the persons voting or offering to vote, and tally the votes during the canvass thereof.

2. Each poll clerk at each polling place for which official ballots are

required to be provided shall have a poll-book for keeping the list of electors voting or offering to vote thereat at the election. Such book shall have eight columns headed respectively: "Number of electors," "Names of electors," "Residence of electors," "Signature or statement number of elector," "Signatures compared by inspector," "Number on ballots delivered to electors," "Number on ballots voted," and "Remarks;" provided, however, that the columns for "Signature or statement number of electors" and "Signatures compared by the inspector," when the poll-book is prepared for use in an election district wholly outside of a city or village having five thousand inhabitants or more, may in the discretion of the board or officer supplying such books be omitted therefrom. Previous to each delivery of an official ballot or set of official ballots by the ballot clerk to an elector, each poll clerk shall enter upon his poll-book in the appropriate column the number of the elector, in the successive order of the delivery of ballots to electors, the name of the elector in the alphabetical order of the first letter of his surname, his residence by street and number or if he has no street number, a brief description of the locality thereof. The column headed "Signature or statement number of elector," shall have printed above each horizontal line the words "the foregoing statements are true," and any elector whose registration was required to be personal shall, previous to the receipt of an official ballot, sign his name by his own hand and without assistance, using an indelible pencil or ink, below the said words in the poll-book kept by the poll clerk who shall be designated by the chairman of the board of inspectors. No such signature shall be required of an elector whose registration was not required to be personal.

After an elector, whose registration was required to be personal, shall have so signed, and before an official ballot shall be given to him, one of the inspectors other than the inspector who receives the ballots from the electors shall compare the signature made in the poll-book with the signature theretofore made by the elector in the registration book on registration day, and if said signature is the same, or sufficiently similar to the signature written on registration day, as to identify it as being written by the same person who wrote the signature on registration day, said inspector shall thereupon certify that fact by writing his initials after such signature, in the column headed "Signatures compared by inspector." The inspector who shall so certify shall be chosen by lot by the board previous to the opening of the polls on election day, and if said inspector so chosen shall absent himself during the day, the board of inspectors shall fill his place by choosing by lot from the inspectors present another of the inspectors other than the inspector who receives the ballots from the electors.

If, on registration day, an elector whose registration was required to be personal had alleged his inability to so sign, then one of the poll clerks designated by the chairman of the board of inspectors shall read the same list of questions to the elector as were required to be read on registration

days from a book to be provided for election day, and to be known as "identification statements for election day," and said poll clerk shall write the answers of the elector thereto. Each of these statements shall be numbered and a number corresponding to the number on the statement sheet shall be entered in the fourth column opposite the name of such elector answering the questions. The questions answered on registration day by the elector shall not be turned to or inspected until all the answers to said questions shall have been written down on election day by the poll clerk. Any person who shall prompt an elector in answering any questions provided in this subdivision shall be guilty of a felony.

At the bottom of each such list of questions shall be printed the following statement: "I certify that I have read to the above named elector each of the foregoing questions and that I have duly recorded his answers as above to each of said questions," and said poll clerk who has made the above record shall sign his name to said certificate and date the same, and note the time of day of making such record.

The comparison of the signature of an elector made on registration and election days, and a comparison of the answers made by an elector on registration and election days, shall be had in full view of the watchers, and the right to challenge electors shall exist until the ballot shall have been deposited in the ballot box. If the signature of the elector or the answers to the questions made by the elector do not correspond, then it shall be the privilege of the watchers and challengers to challenge and the duty of each inspector to challenge, unless some other authorized person shall challenge.

Each poll clerk in every election district of the state shall enter upon his poll-book in the appropriate column the printed number upon the stub of the ballots delivered to each elector, and the number on the ballots voted by him. If the ballot or set of ballots delivered to any elector shall be returned by him to the ballot clerk, and he shall obtain a new ballot or set of ballots, the poll clerk shall write opposite his name on the poll-books, in the proper column, the printed number on the stub of such ballot or additional set of ballots. Each poll clerk shall make a memorandum upon his poll-book opposite the name of each person who shall have been challenged and taken either of the oaths prescribed upon such challenge, or who shall have received assistance in preparing his ballot and shall also enter upon the poll-book opposite the name of such person the names of the election officers or persons who render such assistance, and the cause or reason for such assistance by the elector assisted. As each elector offers his ballot or set of ballots which he intends to vote to the inspector, each poll clerk shall report to the inspector whether the number entered on the poll-book kept by him as the number on the ballot or set of ballots last delivered to such elector is the same as the number on the stub of the ballot or set of ballots so offered. As each elector votes, each poll clerk shall enter in the proper column on his poll-book the number on the detached

stub of the ballots voted. (*Amended by L. 1911, ch. 649, L. 1913, ch. 821, and L. 1916, ch. 537, § 41, in effect May 15, 1916.*)

§ 358. **Preparation of ballots by voters; intent of voters.**—On receiving his ballot the voter shall forthwith and without leaving the inclosed space retire alone, unless he be one that is entitled to assistance in the preparation of his ballot, to one of the voting booths, and without undue delay unfold and mark his ballot as hereafter prescribed. No voter shall be allowed to occupy a booth already occupied by another, or to occupy a booth more than five minutes in case all the booths are in use and voters waiting to occupy the same.

It shall be unlawful to deface or tear an official ballot in any manner; or to erase any printed line, letter or word therefrom; or to erase any name or mark written thereon by a voter. If a voter wrongly mark, deface, or tear a ballot or one of a set of ballots, he may successively obtain others, one set at a time, not exceeding in all three sets, upon returning to the ballot clerks each set of ballots already received.

The voter shall mark his ballot with a pencil having black lead as follows and not otherwise:

1. To vote for any candidate on any ballot, except for an entire group of presidential electors by means of a single mark as hereinafter provided, he shall make a cross × mark in the voting square at the left of the candidate's name.
2. To vote for any candidate not on the ballot, he shall write the candidate's name on a line left blank in the appropriate place.
3. To vote for an entire group of presidential electors, nominated by any party, he shall make a cross × mark in the circle above the party column. If, on a ballot for presidential electors, the voter shall make such mark in the circle above a party column and also before the name of a candidate in such column, or in the voting squares before the names of two or more candidates in such column, without making a voting mark in any voting square of another column and without writing in any name, such individual voting marks shall be treated as surplusage and his vote shall be deemed to have been cast for all of the candidates whose names appear in the party column below such circle. If, however, a ballot for presidential electors shall be so marked in a party circle and in one or more voting squares in the column under such circle and also in any voting square or squares in another column or columns or a name or names be also written in, the vote on a ballot so marked shall only be counted for the candidate so specially indicated.
4. If, on a ballot for presidential electors, the voter shall make a cross × mark in the circle above a party column, and no voting mark in any voting square of the same column, and shall also make a cross × mark in the voting square before the name of a candidate in another party column, or in such squares before the names of two or more candidate in

one or more of such other party columns, or writes in a name or names, he shall be deemed to have voted for the candidates whose names are thus specially indicated and also for all of the candidates whose names appear in the column below the circle containing such mark, except those whose names are printed in the latter column on a horizontal line with the names so specially indicated; provided, however, that if the voter shall make a cross X mark in the circle above a party column and also cross X marks in voting squares before any two or more names on the same horizontal line or write a name in a blank space on a horizontal line with one or more names so individually marked, his vote shall be counted only for candidates for the office of presidential elector which, by individual voting marks or by writing, he shall have specially indicated, though there be no such marks in the column under such circle.

5. To vote on any constitutional amendment or question submitted, he shall make a cross X mark in the appropriate voting square at the left of the question as printed on the ballot.

A cross X mark shall consist of any straight line crossing any other straight line, at any angle, within a circle or voting square. Any mark other than a cross X mark or any erasure of any kind shall make the whole ballot void; but no ballot shall be declared void because a cross X mark thereon is irregular in form. Any ballot which is defaced or torn by the voter shall be void. If a voter shall do any act extrinsic to the ballot itself, such as inclosing any paper or other article in the folded ballot, such ballot shall be void. If the elector marks more names than there are persons to be elected to an office, or if for any other reason it is impossible to determine the elector's choice of a candidate for an office to be filled, his vote shall not be counted for such office but shall be returned as a blank vote for such office. Where, in the case of a candidate for governor or member of assembly, the candidate is nominated by two or more political organizations, and the voter makes a cross X mark in two or more voting spaces or squares, his vote for such candidate shall be counted, but he shall not be recorded in the tally sheet or returns as voting with any particular party or independent body for such candidate. (*Amended by L. 1911, ch. 296, L. 1913, ch. 821, and L. 1916, ch. 537, § 42, in effect May 15, 1916.*)

Form and marking of ballots.—Where slight pencil dots appear adjacent to the voting cross which were evidently made by the voter resting his pencil upon the paper before or after making the cross, the ballot is good and should be counted, and in any event all such ballots should be treated alike and some should not be declared void as to the respective candidates while others open to the same objection are allowed. Ballots bearing irregular cross marks should all be treated alike and are valid by virtue of the express wording of the statute. But ballots upon which the voter first wrote in the voting square the number printed upon the ballot opposite the name of the candidate for whom he intended to vote and then superimposed a cross after discovering the mistake, are void, there being in such case a mark other than the cross which alone is permitted by the statute. Ballots having "half cross marks" in the voting space should be declared to be void, for they bear

an unlawful mark. Ballots with excessive crosses in the voting space and bearing erasures are void. A ballot upon which the voter wrote the name "Sulzer" under the title of Governor without adding the first name of the candidate is valid, for under the statute a voter may write in the name of a candidate not printed on the ballot and vote for him by making a cross in the voting space. *Matter of Garvin* (1915), 168 App. Div. 218, 153 N. Y. Supp. 549.

Spilled and marked ballots.—When it is uncertain whether a ballot indorsed "marked for identification" has been counted, such a ballot, although wholly void because cross marks have been placed before the emblems instead of in the voting spaces, should not be deducted from the count. A ballot containing crosses opposite the names of two candidates for the same office is ineffective only as to that office. Where a ballot has been indorsed "spoiled" at the original canvass, the inspectors cannot be compelled by a writ of mandamus to indorse it "wholly void." Under the evidence, *held*, that a ballot originally marked "spoiled" should not be added to the vote of a candidate, although valid as to him. *People ex rel. Brown v. Board of Supervisors* (1915), 170 App. Div. 358, 156 N. Y. Supp. 214, modfd. 216 N. Y. 732.

Unidentified ballots; ballots void in part; defectively marked ballots.—Where a return shows twenty-four void ballots and the envelope six ballots, and there were eighteen ballots unaccounted for, and the package taken from the box of ballots by the inspectors contains twenty-nine ballots, of which nine are blank, and it cannot be determined which of the other twenty ballots are the missing eighteen void ballots, none of the ballots should be counted. Ballots on which no indorsement has been made, except under an auxiliary writ of mandamus, cannot be deducted, where it does not appear that there were marks or indorsements made on election night that would serve to identify them so that inspectors could subsequently indorse them. Ballots which are void because of improper marks in the voting space should not be counted for another candidate. A ballot on which erasures have been made may be void. A vote for two candidates for the same office renders the ballot void only as to such office. Ballots not containing cross marks, but defective and incomplete marks that may serve for identification, are void. A ballot containing a second cross near the name of a candidate which was not made by the voter, but caused by the heavy ink and incidental to the folding of the ballot, is not invalid. A ballot on which the voter has written the name of his candidate for a certain office in the space underneath the printed name of a candidate instead of in the blank space provided for such purpose is void. A ballot on which the proper cross mark has not been placed before the name of a candidate is void. *People ex rel. Brown v. Board of Supervisors* (1915), 170 App. Div. 364, 156 N. Y. Supp. 205, modfd. 216 N. Y. 732.

Ballots defectively marked.—A ballot which has the name of a candidate written in the blank line, although it was printed as a candidate for the same office, is void. A ballot on which the voter has marked a cross in the proper space in front of each of the candidates for a certain office is blank as to such office. A ballot having a semi-circular mark over the cross, but not a part thereof, is void. A ballot having two crosses in the same voting space, or one cross with an attempted erasure of the other, is void. Flourishes at the upper end of both lines of the cross not constituting distinct lines, but made with the same impression of the pencil, constitute an irregular cross, and do not render the ballot void. *Brown v. Board of Canvassers* (1915), 170 App. Div. 476, 155 N. Y. Supp. 979, modfd. 216 N. Y. 732.

Placing ballot in envelope with enrollment blank.—The provision that "If a voter shall do any act extrinsic to the ballot itself, such as inclosing any paper or other article in the folded ballot, such ballot shall be void," means that the voter must not do any act extrinsic to the ballot which will have the effect to identify the same, as for instance the putting of the ballot in question in the sealed envelope

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Challenges.

L. 1916, ch. 537.

with the enrollment blank. *People ex rel. Brown v. Keller* (1915), 170 App. Div. 324, 155 N. Y. Supp. 976.

§ 359. Manner of voting.

An essential and vital part of the act of voting is the final delivery to the inspector by the voter of his ballot, with the stub visible as required by this section. Hence, where a duly qualified elector placed the three ballots which he had properly marked, with the stubs and an enrollment blank within the envelope for the latter, and sealed the same and delivered it to one of the inspectors, who deposited it in the enrollment box, the ballots are void upon the ground that they were never voted. *People ex rel. Brown v. Keller* (1915), 170 App. Div. 324, 155 N. Y. Supp. 976.

§ 361. Challenges.—A person may be challenged either when he applies to the ballot clerk for official ballots, or when he offers to an inspector the ballot he intends to vote, or previously by notice to that effect to an inspector by any elector. It shall be the duty of each inspector to challenge every person offering to vote whom he shall know or suspect not to be duly qualified as an elector, and every person whose right to register as an elector was challenged at the time of registration, provided such challenge has not previously been withdrawn. In addition to the foregoing any person may be challenged by any duly appointed watcher or challenger either when he applies to the ballot clerk for official ballots or when he offers to an inspector the ballot he intends to vote or previously by notice to that effect to an inspector.

Whenever a person shall apply to the board of inspectors on election day to vote upon the name of a person whose right to register as an elector was challenged, it shall be the duty of the chairman of the board of inspectors or some member of such board to administer to such applicant the preliminary oath prescribed in the next section, and to read to such applicant each question upon the copy of the challenge affidavit signed at the time of registration by the person upon whose name the applicant desires to vote, and the inspectors and watchers shall compare the answers given to such questions with the answers recorded thereto upon the copy of said challenge affidavit, and shall carefully compare the description of the person challenged at the time of registration recorded upon the copy of the challenge affidavit with that of the applicant. If there shall be any material difference or conflict between the answers given by the applicant and the answers recorded upon the copy of the challenge affidavit to the questions printed thereon, or in the description of the person challenged and the applicant, or if the applicant shall refuse to answer any question put to him, or shall refuse to make such oath, his vote shall not be received and the facts thereof shall be recorded in each such case in the challenge record provided for in section three hundred and sixty-four. (*Amended by L. 1910, ch. 428, L. 1911, ch. 649, and L. 1916, ch. 537, § 43, in effect May 15, 1916.*)

§ 364. Record of persons challenged.—1. The inspectors of election shall

L. 1916, ch. 537.

Preservation of ballots.

§§ 366, 374.

keep a minute of their proceedings in respect to the challenging and administering oaths to persons offering to vote, in which shall be entered by one of them the name of every person who shall be challenged or take either of such oaths, specifying in each case whether the preliminary oath or the general oath, or both, were taken. At the close of the election, the inspectors shall add to such minutes a certificate to the effect that the same are all such minutes as to all persons challenged at such election in such district.

2. In cities and villages having a population of five thousand or more, in addition to the foregoing record, the chairman of each board of inspectors shall, immediately after any election or primary, return to every public officer who has filed with him or a member of his board a list of voters to be challenged, such challenge list with a written statement opposite each name, giving the reason, if the name was voted on, why the board permitted any person to vote thereon, or, if some person applied to vote thereon and was challenged and did not vote, the words "challenged and did not vote;" or if no person applied to vote on such name, the words "no application." Before making such return such chairman shall sign his name at the foot of each page of such challenge list. (*Amended by L. 1915, ch. 678, and L. 1916, ch. 537, § 44, in effect May 15, 1916.*)

§ 366. Canvass of voters; preparation for canvass.

Written return inconsistent with indorsements on ballots themselves.—Where the written return of election officers giving the number of void ballots is inconsistent with the indorsements upon the ballots themselves, the particular indorsements should prevail over the written return. *Brown v. Board of Canvassers* (1915), 170 App. Div. 476, 155 N. Y. Supp. 979, modfd. 216 N. Y. 732.

§ 374. Preservation of ballots.—After the last tally sheets and returns are completed, and all the stubs and ballots, except the protested, void and wholly blank ballots, are replaced in the boxes from which they were taken, each box shall be securely locked and sealed, and deposited, by an inspector designated for that purpose, with the officer or board furnishing it, together with the separate sealed package of unused official ballots. The boxes and packages so deposited shall be preserved inviolate for six months after the election, except that they may be opened and their contents examined upon the order of any court of competent jurisdiction or may be opened by direction of a committee of the senate or assembly to investigate and report upon contested elections of members of the legislature voted for at such election and their contents examined by such committee in the presence of the officer having the custody of such boxes. Unless ordered to be preserved by such a court, or unless an examination by such a committee be pending, they shall be opened and their contents destroyed after six months, except, that in a year in which a president of the United States is to be elected, in counties in which no contest has been noted, such boxes may be opened and their contents destroyed after four months and

the boxes prepared for use at the primary election as provided in section seventy-nine of this chapter. The protested, void and wholly blank ballots shall be preserved as provided in section four hundred and thirty-seven of this chapter. Any candidate shall be entitled as of right to an examination in person or by authorized agents of any ballots upon which his name lawfully appeared as that of a candidate; but the court shall prescribe such conditions as of notice to other candidates or otherwise as it shall deem necessary and proper. (*Amended by L. 1913, ch. 821, L. 1916, chs. 31 and 537, § 45, in effect May 15, 1916.*)

Order for examination of voting machines cannot be made under provision for examination of ballot boxes—The provision that "any candidate shall be entitled as of right to an examination in person or by authorized agents of any ballots upon which his name lawfully appeared as that of a candidate," has no application to voting machines and is not made applicable by section 417 of the Election Law (Cons. Laws, ch. 17) which merely declares that other articles of the Election Law, not applicable to voting machines generally, shall apply to *voting* by such machines. This provision is not broad enough to warrant the granting of an order for the examination of voting machines analogous to an order for the examination of ballot boxes under section 374. *Matter of Thomas* (1915), 216 N. Y. 426, revg. 171 App. Div. —.

§ 377. Delivery and filing of papers relating to the election; general provisions.—If the election be other than an election of town, city, village or school officers, held at a different time from a general election, the chairman of the board of inspectors of each election district, except in the city of New York, shall forthwith upon the completion of the triplicate statement of the result, deliver one set of returns to the supervisor of the town in which the election district, if outside of a city, is situated, and if in a city to one of the supervisors of said city. If there be no supervisor, or he be absent or unable to attend the meeting of the county board of canvassers, it shall be forthwith delivered to an assessor of such town or city. One set of returns with tally sheets annexed, together with the poll books of the election, shall be forthwith filed by such inspectors, or by one of them deputed for that purpose, with the town clerk of such town, or the city clerk of such city, as the case may be. The package of protested, void and wholly blank ballots and the third set of returns with tally sheets annexed shall, within twenty-four hours after the completion of such canvass, be filed by the chairman of the board of inspectors, with the board of elections of the county in which the election district is situated. The register of electors and public copy thereof shall be filed as prescribed in section one hundred and eighty of this chapter. Each poll book containing signatures of electors required by this chapter to sign the poll book and all "identification statements for election day" received thereat shall within forty-eight hours after the close of the canvass be filed in person or by mail by the poll clerk of each election district having charge of such book, with the state superintendent of elections in such one of his

L. 1916, ch. 537.

Judicial investigation of ballots.

§ 381.

offices as he may in writing designate. (*Amended by L. 1911, ch. 649, L. 1913, ch. 821, and L. 1916, ch. 537, § 46, in effect May 15, 1916.*)

§ 381. Judicial investigation of ballots.

Review by Supreme Court.—The authority conferred upon the Supreme Court by this section, as amended (L. 1913, ch. 821, § 31), is confined to a review of the protested, void and blank ballots returned by the election officers in the sealed package. It is distinct and separate from any provision of the law relating to the ballots replaced in the ballot box which has been sealed and locked. *People ex rel. Brown v. Freisch* (1915), 215 N. Y. 359, revg. 168 App. Div. 370, 153 N. Y. Supp. 277.

Order directing opening ballot box.—The statute is not susceptible of a construction which will justify an order of the court directing election officers to open a box of voted ballots months after the close of an election, examine the ballots contained therein, and without any marks of identification appearing on said ballots, aided only by a recollection of the situation as it existed on the night of election day, endeavor to select the identical ballots declared void at the time of the canvass. *People ex rel. Brown v. Freisch* (1915), 215 N. Y. 359, revg. 168 App. Div. 370, 153 N. Y. Supp. 277.

Scope of examination of protested ballots.—Where the petition alleges that there were inclosed in the envelope a certain number of void ballots, while the return showed that a greater number had been canvassed for each office, and that the remaining ballots were tied in a separate bundle, marked "protested," and placed in the ballot box, the court may direct the ballot box to be opened, and, if said remaining ballots are found in the separate bundle and marked "protested," that the same be removed from the ballot box and placed in the envelope to be presented to the court upon the hearing of the original proceedings, and if within the recollection of the inspectors, may require that said ballots so identified be indorsed by them in the manner prescribed by the Election Law. In all cases where the petition does not disclose that ballots canvassed as void or protested are so marked or identifiable as to permit the inspectors to immediately select said ballots from those in the box, the court is confined in the examination of the protested, void and wholly blank ballots to such ballots as are found in the envelopes. Where ballots are found in the envelopes that were spoiled or canceled, the court may order them marked as such and placed in the boxes where they properly belong. Any marks or writings made by the inspectors upon ballots which may be removed from the ballot boxes should be preserved, and an additional indorsement made thereon as directed under the order of the court should indicate that it was made pursuant to such order. *People ex rel. Brown v. Freisch* (1915), 215 N. Y. 359, revg. 168 App.

Where state courts have jurisdiction to pass upon validity of election of member of Congress.—Although Congress is the final judge of the qualifications of its own members, until a certificate of election has been transmitted and acted upon, the courts of this state are open to a candidate who complains that the certificate is about to issue in violation of the law. *People ex rel. Brown v. Board of Supervisors* (1916), 216 N. Y. 732, modfg. 170 App. Div. 364, 156 N. Y. Supp. 205, 170 App. Div. 358, 156 N. Y. Supp. 214, 170 App. Div. 476, 155 N. Y. Supp. 979.

Proceeding under this section to secure a recanvass of the "void and protested" ballots contained in the sealed envelopes and cast at the general election of a representative in Congress. Evidence examined, and *held*, that the order of the Special Term should be modified. *Brown v. Board of Canvassers* (1915), 170 App. Div. 476, 155 N. Y. Supp. 979, modfd. 216 N. Y. 732.

Where the notice of appeal includes a certain ballot as one of those in reference to which the petitioner questions the decision at Special Term but his counsel fails to question the decision in his brief, the appellate court will not consider such

§§ 382, 393, 397, 411.

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ballot. *Brown v. Board of Canvassers* (1915), 170 App. Div. 476, 155 N. Y. Supp. 979, modfd. 216 N. Y. 732.

§ 382. Destruction of books, records and papers relating to the elections.—The officer or board with whom the statement of the result, the returns with tally sheets annexed together with the poll books of the election, the “identification statements for election day,” the register of electors and the public copy thereof are filed after an election shall preserve the same for at least two years after the receipt thereof and until all suits or proceedings before any court or judge touching the same shall have been determined. At the expiration of such time such books, records and papers, except a poll book containing signatures of electors, may be destroyed by such officer. This section shall not apply to a city of over one million inhabitants. (*Added by L. 1916, ch. 537, § 47, in effect May 15, 1916.*)

§ 393. Adoption of voting machine.

Use of voting machines for voting upon propositions submitted by the Constitutional Convention of 1915. *Atty. Genl. Opin.*, 5 *State Dep. Rep.* 503 (1915).

§ 397. Form of ballots.—All ballots shall be printed in black ink on clear, white material, of such size as will fit the ballot frame, and in as plain, clear type as the space will reasonably permit. The party emblem for each political party represented on the machine, which has been duly adopted by such party in accordance with this chapter, and the party name or other designation shall be affixed to the names, or, in case of presidential electors, to the list of candidates of such party. Each party may be further distinguished by a stripe of color below the party emblem, which shall be adopted in the same manner as the party emblem. The order of the lists or names of candidates of the several parties or organizations shall be arranged as provided by this chapter for blanket ballots, except that they may be arranged either vertically or horizontally. When the same person has been nominated for the same office to be filled at the election by more than one party or independent body, all the provisions relating to the official ballot in this chapter shall apply and the voting machine shall be so adjusted that his name shall appear but once on the ballot. But in the case of a person so nominated, the name and emblem of the party casting the highest number of votes for governor at the last preceding election of a governor shall be at the left of or above the names and emblems of other parties and independent bodies uniting in the same nomination, and the names and emblems of the latter parties shall follow in the order of priority based on the relative party vote for governor at such election, counting from left to right if the column be horizontal and downward if the column be vertical. (*Amended by L. 1911, ch. 649, L. 1913, ch. 821, and L. 1916, ch. 537, § 48, in effect May 15, 1916.*)

§ 411. Instructing voters.—In case any voter after entering the voting machine booth, and before the closing of such booth, shall ask for fur-

ther instructions concerning the manner of voting, two inspectors of opposite political parties shall give such instructions to him; but no inspector or other election officer or person assisting a voter shall in any manner request, suggest or seek to persuade or induce any such voter to vote any particular ticket, or for any particular candidate, or for or against any particular amendment, question or proposition. After giving such instructions, the inspectors shall retire and such voter shall then close the booth and vote as in the case of an unassisted voter. (*Amended by L. 1916, ch. 537, § 49, in effect May 15, 1916.*)

§ 414. Disposition of irregular ballots; and preserving the record of the machine.—The inspectors of election shall, as soon as the count is completed and fully ascertained as in this chapter required, lock the machine against voting, and it shall remain so for the period of three months, except as provided by section four hundred and sixteen of this chapter and except that it may be opened and all the data and figures therein examined upon the order of any court of competent jurisdiction or may be opened by direction of a committee of the senate or assembly to investigate and report upon contested elections of members of the legislature voted for by the use of such machine and such data and figures examined by such committee in the presence of the officer having the custody of such machine. Any candidate shall be entitled on application to the supreme court and on reasonable grounds shown to have any machine in or upon which he was named as a candidate opened and all the data and figures therein examined by him or his authorized agents, but the court shall prescribe such conditions as of notice to other candidates or otherwise as it shall deem necessary and proper. Whenever irregular ballots have been voted, the inspectors shall return all of such ballots in a properly secured sealed package indorsed "irregular ballots," and file such package with the original statement of canvass. It shall be preserved for six months after such election, and may be opened and its contents examined only upon order of the supreme court or a justice thereof, or a county judge of such county, or by direction of such a committee of the senate and assembly if the ballots relate to the election under investigation by such committee, and at the expiration of such time, such ballots may be disposed of in the discretion of the officer or board having charge of them. (*Amended by L. 1916, ch. 537, § 50, in effect May 15, 1916.*)

§ 415. Disposition of keys; opening counter compartment.—The keys of the machine shall be enclosed in an envelope which shall be supplied by the officials, on which shall be written the number of the machine and the district and ward where it has been used, which shall be securely sealed and indorsed by the election officers, and shall be so returned to the officer from whom they were received. The number on the seal and the number registered on the protective counter, if so provided, shall be written on the envelope containing the keys. All keys for voting machines shall be kept

§ 416.

Re-canvass of vote.

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securely locked by the officials having them in charge. A public officer who, by any provision of law, is entitled to the custody of a machine for any period of time, shall be entitled to the keys therefor while such machine is in his charge. It shall be unlawful for any unauthorized person to have in his possession any key or keys of any voting machine; and all election officers, or persons entrusted with such keys for election purposes, or in the preparation of the machine therefor, shall not retain them longer than necessary to use them for such legal purpose. All machines shall be boxed and collected as soon after the close of the election as possible, and the machines, and the boxes for the machines, shall at all times be stored in a suitable place. (*Amended by L. 1909, ch. 465, and L. 1916, ch. 537, § 51, in effect May 15, 1916.*)

§ 416. Provision for re-canvass of vote.—Whenever it shall appear that there is a discrepancy in the returns of any election district, the county board of canvassers shall summon the inspectors of election thereof and said inspectors shall, in the presence of said board of canvassers, or a bi-partisan committee thereof, make a record of the number on the seal and the number on the protective counter, if one is provided, open the counter compartment of said machine, and without unlocking said machine against voting, shall re-canvass the vote cast thereon. Before making such re-canvass the county board of canvassers shall give notice in writing to the custodian and to the county chairman of each political party or nominating body that shall have nominated candidates for the election, of the time and place where said re-canvass is to be made; and each of such political parties or nominating bodies may send two representatives to be present at such re-canvass. If, upon such re-canvass, it shall be found that the original canvass of the returns has been correctly made from the machine, and that the discrepancy still remains unaccounted for, the county board of canvassers, of said committee thereof, with the assistance of the custodian of said machine, shall, in the presence of the inspectors of election and the authorized representatives of the several said political parties or nominating bodies, unlock the voting and counting mechanism of said machine and shall proceed to thoroughly examine and test the machine to determine and reveal the true cause or causes, if any, of the discrepancy in the returns from said machine. Before testing the counters they shall be reset at zero (000) after which each counter shall be operated at least one hundred times. After the completion of said examination and test, the custodian shall then and there prepare a statement in writing giving in detail the result thereof, and said statement shall be witnessed by the persons present and shall be filed with the secretary of the county board of canvassers. But nothing contained in this section shall authorize any change in the returns filed by inspectors of election in any election district nor authorize any board of canvassers in any wise to consider or act

upon any re-canvass of votes made pursuant thereto. (*Amended by L. 1916, ch. 537, § 52, in effect May 15, 1916.*)

Voting machines; mistake in reading vote shown by voting machines; when courts may issue mandamus directing election clerks to make correct returns and directing board of canvassers to recanvass the vote.—A mistake by the inspectors of election in reading the vote for mayor as shown on a voting machine was discovered after the machine had been locked and the official returns sealed, but before the inspectors of election had filed their return with the commissioners of election. The inspectors decided that they could lawfully make no change in the return, but explained their mistake to the commissioners. They also failed as required by the statute (Election Law, Cons. Laws, ch. 17, § 413) to certify the total number of votes as shown on the public counter of the voting machine. If this had been done, it would have appeared that their return, as filed, showed more votes for the candidates for mayor than voters. No discrepancy being shown on the face of the return the county board of canvassers did not order a recanvass of the vote. The Election Law (§ 416) contains provisions for a recanvass of the vote on election machines under the direction of the county board of canvassers *whenever it shall appear that there is a discrepancy in the returns of any election district*. In this case if the inspectors had done their duty and certified the total number of votes as shown on the public counter of the machine, a discrepancy in the returns would have appeared, and they may be required by mandamus to make a correct return. *Matter of Smith v. Wenzel* (1915), 216 N. Y. 421, affg. 171 App. Div.

When discrepancy in returns of election district; construction of word "discrepancy"; injunction; jurisdiction.—The provision of this section that "Whenever it shall appear that there is a discrepancy in the returns of any election district, the county board of canvassers shall summon the inspectors of election thereof and said inspectors shall, in the presence of said board of canvassers, or a bipartisan committee thereof, make a record of the number on the seal and the number of the protective counter, if one is provided, open the counter compartment of said machine, and without unlocking said machine against voting, shall recanvass the vote cast thereon," is applicable to voting machines alone. Such machines when properly used, are reasonably accurate, and require the certificate made by the district inspectors to conform to a given standard. Where an alleged return does not conform to the statute there is a discrepancy between it and the statutory requirement, and in such a case there is a discrepancy in the return. The word "discrepancy" in said section is not to be construed in a narrow sense but in such a sense as to justify as much relief in cases of error in voting machine districts as has been afforded for nearly seventy-five years in cases of error in districts where there has been voting by ballot. A county board of canvassers is a ministerial body having no judicial power, and a temporary injunction restraining such board from opening, pursuant to a resolution of such board duly adopted, certain voting machines used at a general election in a city within the county upon the ground that such board has no jurisdiction in the premises to take such action or to open or cause to be opened such voting machines, will be dissolved on motion. *Smith v. Board of Canvassers* (1915), 92 Misc. 607, 156 N. Y. Supp. 837, affd. 171 App. Div. —, 216 N. Y. 421.

§ 417. Application of other articles and penal law.

Section 374, providing for an examination of ballot boxes, is not made applicable to voting machines by this section. *Matter of Thomas* (1915), 216 N. Y. 426, revg. 171 App. Div. —.

§§ 418, 419, 430.

Voting machines; election districts.

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§ 418. When ballot clerks not to be elected.

Employment of ballot clerks in election districts where voting machines are used. Atty. Genl. Opin., 5 State Dep. Rep. 550 (1915).

§ 419. Number of voters in election districts.—For any election in any city, town or village in which voting machines are to be used, the election districts in which such machines are to be used may be created by the officers charged with the duty of creating election districts, so as to contain as near as may be four hundred and fifty voters each. Such redistricting or redivision may be made at any time after any November election and on or before August fifteenth following, to take effect on the sixth Wednesday before the next general election. Where such redistricting or redivision shall be made in any town, the board making the same shall, on or before September first following, appoint from the inspectors of election then in office (if sufficient therefor are then in office, and, if not, from persons not in office, sufficient to make up the requisite number), to take effect on or before the first day of registration thereafter and not earlier than the second Wednesday following the next fall primary, four inspectors of election for each election district thus created, who shall be equally divided between the two parties entitled to representation on said boards of inspectors. Thereafter no redivision of such election district shall be made for elections by such machines until at some general election the number of votes cast in one or more of such districts shall exceed five hundred. But the town board of a town in which such machines are used may alter the boundaries of the election districts at any time after a general election and on or before August fifteenth following, to take effect on the sixth Wednesday before the next general election, provided that the number of such election districts in such town shall not be increased or reduced, and the number of votes to be cast in any district whose boundaries are so altered shall not exceed five hundred.

If the creation, division or alteration of an election district is rendered necessary by the creation, division or alteration of a town, ward or city or rendered necessary or occasioned by the division of a county into assembly districts after a reapportionment by the legislature or members of assembly, such creation, division or alteration of an election district shall be made and shall take effect immediately; and inspectors of election for the new election districts, as so created, divided or altered, shall be appointed, in the manner provided by law, a reasonable time before the next official primary or meeting for registration and such appointments shall take effect immediately. (*Amended by L. 1911, ch. 542, L. 1914, ch. 244, and L. 1916, ch. 537, § 53, in effect May 15, 1916.*)

§ 430. Organization of county board of canvassers.—The board of supervisors of each county shall be the county board of canvassers of such county. The county board of canvassers of each county within the city of New York shall consist of the members of the board of aldermen of the city of

New York elected as such within the county. The said county boards of canvassers shall also within their respective counties be the city board of canvassers of such city. The county board of canvassers of a county containing a city or cities shall be the city board of canvassers of such city or cities, except that the board of aldermen of the city of Buffalo shall be the city board of canvassers for such city. The county board of canvassers of the respective counties shall meet on the Tuesday next after each election of public officers held in such county other than an election of town, city, village or district school officers held at a different time from a general election. The board of county canvassers shall meet at the usual place of meeting of the board of supervisors, except that in a county wholly included in the city of New York such board of county canvassers shall meet at the office of the county clerk. Upon such meeting they shall choose one of their number chairman of such board. In a county having a single commissioner of elections, instead of a board of elections, such commissioner * shall be the secretary of the board of county canvassers. In a county wholly included within the limits of the city of New York and in a county, if any, in which the general powers and duties of a county board of elections is devolved upon the county clerk by this chapter, the county clerk, or if he be absent or unable to act, a deputy county clerk designated by the clerk, shall be secretary of the board of county canvassers. In every other county of the state the president of the board of elections shall be the secretary of the board of county canvassers, or if he be absent or unable to act, the secretary of such board shall be the secretary of the board of county canvassers. When a chairman of the board of county canvassers shall have been chosen, as above provided, the secretary of such board shall thereupon administer the constitutional oath of office to the chairman, who shall then administer such oath to each member, and to the secretary of the board. A majority of the members of any board of canvassers shall constitute a quorum thereof. If, on the day fixed for such meeting, a majority of any such board shall not attend, the members of the board then present shall elect the chairman of the board and adjourn to some convenient hour of the next day. If such board, or a majority thereof, shall fail or neglect to meet within two days after the time fixed for organizing such board, the supreme court, or any justice thereof, or county judge within such county, may compel the members thereof by writ of mandamus to meet and organize forthwith. (*Amended by L. 1910, ch. 432, and L. 1916, ch. 537, § 54, in effect May 15, 1916.*)

§ 431. **Production of returns and tally sheets.**—As soon as such board of county canvassers shall have been organized, the officer with whom they were filed shall deliver to such board of canvassers all the returns with tally sheets annexed containing the original statements of canvass received from inspectors of election for districts within the county for which said board

* So in original.

are county or city canvassers. The original statements which have been delivered to members of the board of canvassers shall then be delivered to the board. If any member of the county board of canvassers shall be unable to attend the first meeting of such board, he shall, at or before such meeting, cause to be delivered to the secretary of such board any original statement that may have come into his possession. If, at the first meeting of a county board of canvassers of any county, all returns with tally sheets annexed so required to be produced shall not be produced before the board, it shall adjourn to some convenient hour of the same or the next day, and the secretary of such board shall, by special messenger or otherwise, obtain such missing returns, if possible, otherwise he shall procure the other set of returns with tally sheets annexed, or, failing that, the third set of returns without tally sheets, in time to be produced before such board at its next meeting. At such first meeting, or as soon as an original statement of the result of the canvass of the votes cast at such election in every election district of the county shall be produced before such board, the board shall proceed to canvass the votes cast in such county at such election. (*Amended by L. 1913, ch. 821, and L. 1916, ch. 537, § 55, in effect May 15, 1916.*)

§ 437. Statements of canvass by county boards; preservation of protested, void and wholly blank ballots.—Upon the completion by a county board of canvassers of the canvass of votes of which original statements of canvass are by law required to be delivered to them, by the boards or officers with whom the same may have been filed by the inspectors of election, they shall make separate statements thereof as follows:

1. One statement of all such votes cast for each office of elector of president and vice-president of the United States.
2. One statement of all such votes cast for each state office, to include, in the case of a candidate for governor who was nominated by two or more parties or independent bodies, a separate statement of the number of votes cast for him as the candidate of each party or independent body by which he was nominated.
3. One statement of all such votes cast for each office of representative in congress, except that the board of canvassers in the county of New York shall not make a statement of the votes cast in any election district in said county, for any candidate for the office of assemblyman, senator or representative in congress, the candidates for which were also voted for by voters in election districts in any county not within the city of New York.
4. One statement as to all such votes cast upon every proposed constitutional amendment or other proposition or question duly submitted to all the voters of the state.
5. One statement as to all the votes cast for all and each of the candidates for each office of member of assembly for which the voters of such

county or any portion thereof, except as provided in paragraph numbered three in this section, were entitled to vote at such election.

6. One statement as to all the votes cast for each county office, and office of school commissioner, for which the voters of such county, or any portion thereof, were entitled to vote at such election, and to be canvassed by them.

7. One statement as to all the votes, if any, upon any proposition or question upon which only the voters of such county were entitled to vote at such election.

8. In the counties wholly or partly within the city of New York, the respective county boards shall make a separate statement as to the votes, if any, so cast upon any proposition or question upon which only the voters of such city were entitled to vote at such election in such county or portion thereof.

Each such statement shall set forth, in words written out at length, all votes cast for all the candidates for each such office; and if any such office was to be filled at such election by the voters of a portion only of a county, all the votes cast for all the candidates for each office in any such portion of a county, designating it by its proper district number or other appropriate designation; the name of each such candidate; the number of votes so cast for each, and, in the case of a candidate for governor who was nominated by two or more parties or independent bodies, the number separately stated of votes cast for him as the candidate of each party or independent body by which he was nominated; and the whole number of votes so cast upon any proposed constitutional amendment or other proposition or question, and all the votes so cast in favor of and against the same respectively. In the counties wholly or partly within the city of New York, the respective county boards shall make a separate statement of the votes cast for all the city offices voted for by the voters of such city or any portion thereof, within such counties.

The statements required by this section shall each be certified as correct over the signatures of the members of the board, or a majority of them, and shall be filed and recorded in the office of the board of elections of each county, except in the counties wholly within the city of New York, and in such counties they shall be filed in the office of the county clerk. When the whole canvass shall be completed, all original statements of canvass used thereat shall be filed in the office of the secretary of the board, who shall file a report of such canvass with the board of supervisors, except in counties wholly within a city of the first class. The original statement of canvass not used at the canvass and the packages of protested, void and wholly blank ballots shall be retained in the office in which or by the officer with whom they were filed, except as otherwise expressly provided by law. The packages of protested, void and wholly blank ballots shall be retained inviolate in the office in which they are filed subject to the order and examination of a court of competent jurisdiction, or to examination by a com-

mittee of the senate or assembly to investigate and report on a contested election of member of the legislature where such ballots were cast at such election, and may be destroyed at the end of six months from the time of the completion of such canvass, unless otherwise ordered by a court of competent jurisdiction or unless such committee examination be pending. (*Amended by L. 1913, ch. 821, L. 1914, ch. 244, and L. 1916, ch. 537, § 56, in effect May 15, 1916.*)

§ 438. **Decisions of county boards as to persons elected.**—Upon the completion of the statements required by the preceding section the board of canvassers for each county shall determine what person has by the greatest number of votes been so elected to each office of member of assembly to be filled by the voters of each county for which they are county canvassers if constituting one assembly district, or in each assembly district therein, if there be more than one, and each person elected by the greatest number of votes to each county office of such county to be filled at such election, and if there be more than one school commissioner district in such county, each person elected by the greatest number of votes to the office of school commissioner to be filled at such election in each district. The board of elections of the county of Hamilton shall forthwith transmit to the board of elections of the county of Fulton a certified copy of the statement so filed and recorded in its office of the county board of canvassers of Hamilton county as to all the votes so cast in Hamilton county for all the candidates and for each of the candidates for the office of member of assembly of the assembly district composed of Fulton and Hamilton counties; and the board of elections of Fulton county shall forthwith deliver the same to the Fulton county board of canvassers, who shall from such certified copy, and from their own statement as to the votes so cast for such office in Fulton county, determine what person was at such election elected by the greatest number of votes to such office. Such board of each county shall determine whether any proposition or question submitted to the voters of such county only has by the greatest number of votes been adopted or rejected.

All such determinations shall be reduced to writing and signed by the members of such board, or a majority of them, and filed and recorded in the office of the board of elections of such county, except in the counties wholly within the city of New York, and in such counties the county clerk, who or which shall each cause a copy thereof, and of the statement filed and recorded in his or its office, upon which such determination was based, to be published in accordance with the provisions of the laws of eighteen hundred and ninety-two, chapter six hundred and eighty-six, sections twenty-one and twenty-two.

The board of elections of each county, except in the counties wholly within the city of New York, and in such counties the county clerk, shall prepare as many certified copies of each certificate of the determination of the county * board of canvassers of such county as there are persons

* So in original.

L. 1916, ch. 537.

Board of canvassers.

§ 439.

declared elected in such certificate, and shall, without delay, transmit such copies to the persons therein declared to be elected, respectively. (*Amended by L. 1916, ch. 537, § 57, in effect May 15, 1916.*)

§ 439. **Transmission of statements of county boards to secretary of state and board of elections.**—Upon the filing in the office of the county clerk or board of elections of a statement of the county board of canvassers as to the votes cast for candidates for the offices of electors of president and vice-president, or as to the votes cast for candidates for state officers, except members of assembly, and for representatives in congress, or as to the votes cast on any proposed constitutional amendment or other proposition or question submitted to all the voters of the state, such county clerk or board of elections shall forthwith make two certified copies of each such statement, and, within five days after the filing thereof in his or its office, transmit by mail one of such copies to the secretary of state, and one to the comptroller of the state. The comptroller shall forthwith upon the receipt thereof deliver such certified copy to the secretary of state. If any certified copy shall not be received by the secretary of state on or before the last day of November next after a general election, or within twenty days after a special election, he shall dispatch a special messenger to obtain such certified copy from the county clerk or board of elections required to transmit the same, and such county clerk or board of elections shall immediately upon demand of such messenger at his or its office make and deliver a certified copy to such messenger who shall, as soon as practicable, deliver it to the secretary of state.

The board of elections of each county, except a county wholly within the city of New York, and in any such county the county clerk, shall transmit to the secretary of state within twenty days after a general election, and within ten days after a special election, a list of the names and residences of all persons determined by the board of county canvassers of such county to be elected member of assembly, or to any county office; and on or before the fifteenth day of December in each year a certified tabulated statement of the official canvass of the votes cast in each such county by election districts for candidates for governor, lieutenant-governor, secretary of state, comptroller, treasurer, attorney-general, state engineer and surveyor and United States senator, or any proposed constitutional amendment or other proposition, at the last preceding general election, to include, in the case of a candidate for governor who was nominated by two or more parties or independent bodies, a separate statement of the number of votes cast for him as the candidate of each party or independent body by which he was nominated.

Upon the filing in the office of the county clerk of a county wholly or partly within the city of New York of a statement of the county board of canvassers as to the votes cast for candidates for a city office within such city, such county clerk shall forthwith make a certified copy of each such

statement and, within five days after the filing thereof in his office, deliver in a sealed envelope such certified copy to the board of elections of the city of New York; on or before the fifteenth day of December in any year in which there shall have been an election for a city office for which votes were cast in a county within the city of New York the county clerk thereof shall file with the city clerk of such city a certified copy of the official canvass of the votes cast in such county or portion thereof by election districts for such city office, and such canvass by election districts shall, as soon as possible thereafter, be published in the City Record. (*Amended by L. 1914, ch. 244, and L. 1916, ch. 537, § 58, in effect May 15, 1916.*)

§ 485. Card lists of registered electors.—The board of inspectors of each election district shall on each day of registration transfer to cards, to be provided for that purpose by the secretary of state, which cards shall be in form and style approved by the state superintendent of elections, a complete copy of the name of each person registered in their respective districts, together with all of the answers made and information given by the person registered, at the time of registration, and such cards, inclosed and sealed in a cover to be provided for that purpose by the secretary of state, shall be delivered personally or by mail forthwith by the chairman of the board of inspectors together with a statement on a blank form, to be furnished by the secretary of state after approval by the state superintendent of elections, that the cards delivered contain a correct copy of all the names registered and information given by the persons so registered, to the state superintendent of elections at one of his offices to be designated by him.

In cities of the first class the board of inspectors of each election district shall also on each day of registration transfer to the cards, to be provided for that purpose by the secretary of state, which cards shall be in form and style approved by the state superintendent of elections, a complete copy of the name of each person registered in their respective districts, together with all of the answers made and information given by the persons registered, at the time of registration and such other and further information as may be required by said card and such cards, inclosed and sealed in a cover to be provided for that purpose by the secretary of state, shall be delivered personally forthwith by the chairman of the board of inspectors together with a statement on a blank form, to be furnished by the secretary of state after approval by the state superintendent of elections, that the cards delivered contain a correct copy of all the names registered and information given as required by said card, to the police department of said city at such office as shall be designated by said police department. (*Amended by L. 1911, ch. 649, L. 1915, ch. 678, and L. 1916, ch. 537, § 59, in effect May 15, 1916.*)

ELECTIONS.

L. 1916 ch. 97.—An Act to authorize the custodians of primary records of the county of Niagara to correct and complete the enrollment and enrollment books in one election district of said county. (*In effect May 1, 1916.*)

EXECUTIONS.

Code of Civil Procedure.

§ 1380. Execution against decedent's property.—After the expiration of one year from the death of a party, against whom a final judgment for a sum of money, or directing the payment of a sum of money is rendered, the judgment may be enforced by execution against any property upon which it is a lien with like effect as if the judgment debtor was still living. But such an execution shall not be issued, unless an order granting leave to issue it is procured from the court from which the execution is to be issued, and from a surrogate's court of this state, which has duly granted letters testamentary or letters of administration upon the estate of the deceased judgment debtor. Where the lien of the judgment was created as prescribed in section twelve hundred and fifty-one of this act, neither order can be made until the expiration of eighteen months after letters testamentary or letters of administration have been duly granted upon the estate of the decedent, and for that purpose such a lien existing at the decedent's death continues for two years thereafter, notwithstanding the previous expiration of ten years from the filing of the judgment roll. But where letters upon the estate of the decedent have not been granted within eighteen months after his death by the surrogate's court of the county in which the decedent resided at the time of his death, or if the decedent resided out of the state at the time of his death, and letters testamentary or letters of administration have not been granted within the same time by the surrogate's court of the county in which the property on which the judgment is a lien is situated, such court may grant the order where it appears that the decedent did not leave any personal property within the state upon which to administer. In such case the lien of the judgment existing at the decedent's death continues for two years as aforesaid. Provided, however, that such judgment lien, existing at the decedent's death, upon the decedent's real property, or some portion thereof, may be enforced and payment thereof obtained during the said eighteen months after granting of letters testamentary, or letters of administration, in the manner prescribed by title four of chapter eighteen of this act. But this section shall not apply to real estate which shall have been conveyed, or hereafter may be conveyed by the deceased judgment debtor during his lifetime, if such conveyance was made in fraud of his creditors or any of them, and any judgment creditor of said deceased, against whose judgment said conveyance shall have been, or may hereafter be, declared fraudulent by the judgment and decree of any court of competent jurisdiction, may enforce his said judgment against such real property, with like effect as if the judgment debtor was living, and it shall not be necessary to obtain the leave of any court or officer to issue such execution, and the same may be issued at any time to the sheriff of the county where such property is or may be situated.

Code Civ. Pro. § 1380. Executions against decedent's property.L. 1916, ch. 625.

The person issuing such execution, however, shall annex thereto a description of the real estate against which the same is sought to be enforced, as aforesaid, and shall endorse on said execution the words "issued under section thirteen hundred and eighty of the code of civil procedure," whereupon said sheriff shall enforce said execution as therein directed, against the property so described, and not against any other property, either real or personal, and all provisions of law relating to the sale and conveyance of real estate on execution and the redemption thereof shall apply thereto. (*Amended by L. 1916, ch. 625, in effect May 20, 1916.*)

EXECUTIVE LAW.

(L. 1909, ch. 23.)

§ 8. Examinations and inspections by governor.

The term of office of persons appointed by the Governor, pursuant to this section, with the right to make investigations, expires with the term of the Governor who appointed them. Atty. Genl. Opin., 5 State Dep. Rep. 500 (1915).

§ 31. Copyright of notes prepared by court reporters.—The copyright of the statements of facts, of the head notes and of all other notes or references prepared by the state reporter, the supreme court reporter and the miscellaneous reporter must be taken by and shall be vested in the secretary of state for the benefit of the people of the state. The secretary of state is authorized by a writing filed in his office to grant to any person, firm or corporation, under such terms and conditions as he may determine to be for the best interests of the state, the right to publish the above mentioned copyrighted matter in an annotated edition of the volumes of law reports prepared by the reporters hereinbefore mentioned which have been heretofore issued. Said publication shall be made without cost to the state, and nothing in this section contained shall otherwise affect the obligation of any contract for the publication of such reports. (*Amended by L. 1916, ch. 171, in effect Apr. 7, 1916.*)

§ 62. General duties; attorney general.

The Governor should make his demand under subdivision 2 in an official form, defining the powers to be conferred upon the Deputy Attorney-General and correspondingly withdrawn from the local district attorney, but a special provision superseding the district attorney is not necessary. *People ex rel. Osborne v. Board of Supervisors* (1915), 168 App. Div. 765, 154 N. Y. Supp. 266.

Compensation of deputy attorney-general; liability of local county.—An attorney appointed upon the oral direction of the Governor, of which there is no official record, as a Special Deputy Attorney-General authorized to pursue a definite line of investigation of charges relating to the conduct of a State prison, and to prosecute persons involved in the charges, but whose compensation has not been fixed by the Attorney-General, is not entitled under subdivision 2 of section 62 of the Executive Law, as amended by chapter 14 of the Laws of 1911, to compel the board of supervisors of the local county to pay him in accordance with the evidence submitted. *It seems*, that the appointment was made under section 65 of the Executive Law. *People ex rel. Osborne v. Board of Supervisors* (1915), 168 App. Div. 765, 154 N. Y. Supp. 266.

§ 65. Additional counsel; attorney general.

Appointment of deputy attorney-general.—*People ex rel. Osborne v. Board of Supervisors* (1915), 168 App. Div. 765, 154 N. Y. Supp. 266.

§ 67. Deputy attorney-general to act as special district attorney and as

counsel to state superintendent of elections.—Whenever the governor shall advise the attorney-general that he has reason to doubt whether in any county the law relating to crimes against the elective franchise is properly enforced, the attorney-general shall require from the district attorney of such county, and it shall be the duty of such district attorney forthwith to make to the attorney-general a report of all prosecutions and complaints within his county during the year then last past for offenses under the election law and article seventy-four of the penal law and of the action had thereon. The attorney-general may require from the state superintendent of elections, and it shall be that officer's duty forthwith to make a report of all prosecutions within such county during the year then last past for such offenses upon complaints made by said superintendent, or his deputy superintendents of elections, and of the action had thereon. The attorney-general shall assign one or more of his deputies to act as counsel for the state superintendent of elections and to take charge of prosecutions under the election law and article seventy-four of the penal law. Such deputy shall represent the people of this state in all such prosecutions before all magistrates and in all courts and before any grand jury having cognizance thereof; and shall act as special counsel and adviser to said state superintendent of elections in the performance of his duties. The deputies so assigned shall be appointed pursuant to section sixty-one of this chapter. They may be especially appointed thereunder for the purpose of such assignment and for the performance of the duties herein described. Whenever the attorney-general shall advise the governor that there is occasion for an extraordinary term in any such county to inquire into and try cases arising under said article seventy-four of the penal law, the governor may appoint an extraordinary term of the supreme court to be constituted and held for the trial of criminal cases in such county, pursuant to section one hundred and fifty-three of the judiciary law. Grand and petit juries shall be drawn and summoned for said term in the manner provided by law, and such cases shall be brought before such inquest and court as the attorney-general shall direct. All the provisions of sections sixty-two and sixty-five of this chapter shall apply to such extraordinary term. It shall be the duty of the district attorney of the county, and of the assistants, clerks and employees in his office, and of all police authorities, officers and men within any such county, to render to the attorney-general and his deputy, whenever requested, all aid and assistance within their power in such prosecutions and in the conduct of such cases. The jurisdiction conferred upon the attorney-general herein to prosecute crimes, is concurrent in each county with that of the district attorney; but whichever of such officers shall first assume jurisdiction of a particular offense shall have exclusive jurisdiction to prosecute for the same unless or until the governor shall, by written order filed with both such officers, give such jurisdiction to the other. (*Amended by L. 1916, ch. 359, in effect May 1, 1916.*)

L. 1916, ch. 160.

Stenographer's fees.

Code Civ. Pro. § 3311.

§ 102. Notary public acting in more than one county.

Filing notary's certificate with other counties.—A notary public duly appointed for one county who complies with this section relating to the filing of his certificate in another county, by forwarding by mail to the clerk of the other county his autograph signature upon a certificate of the clerk of the county where he was originally registered setting forth his appointment and qualifications and stating that the clerk is well acquainted with his handwriting and believes the signature to be genuine, etc., is entitled to have his certificate filed in the other county. The clerk of the other county, upon receiving the certificate, should not refuse to file it merely because the notary refuses personally to appear before him, in the absence of any valid reasons for requiring him to do so. *People ex rel. Horsey v. Ganly* (1915), 168 App. Div. 856, 154 N. Y. Supp. 371.

§ 104. Disposition of fees paid by notary public.

Disposition of fees received by county clerk from notaries public.—Under the Bronx County Act (Laws of 1912, chap. 548), and sections 103 and 104 of the Executive Law, it is the duty of the county clerk of Bronx county to collect a fee of ten dollars from each notary public appointed and qualifying, and of the amount so collected to pay three dollars into the treasury of the city of New York, and to remit the balance to the State Treasurer. *People v. Ganly* (1915), 170 App. Div. 702, 156 N. Y. Supp. 671.

EXECUTORS.

Executions against decedent's property; see **Executions**. Generally; see **Surrogate's Courts**.

FACTORIES.

See **Labor L.**

FARM PRODUCE.

Defined; **Agricultural L.**, § 282.

FARM SETTLEMENT.

Bureau established; **Agricultural L.**, §§ 266-267.

FEES.

Code of Civil Procedure.

§ 3311. Stenographer's fees.—Except where otherwise agreed, or when special provision is otherwise made by statute, a stenographer is entitled, for a copy fully written out from his stenographic notes of the testimony, or any other proceeding, taken in an action, or a special proceeding in a court of record, or before a judge or justice thereof, and furnished, upon request, to a party or his attorney, to the following fees for each folio: In a trial term of the supreme court, or at a special term of the supreme court in the third, fourth, fifth, sixth, seventh or eighth judicial districts, six cents; in any other court or courts, ten cents; and for the copy of the testimony required to be made in any proceeding for the record of the

L. 1911, ch. 851, § 4. State college of forestry at Syracuse. L. 1916, ch. 118.

surrogate's court of the counties of New York, Bronx, Kings and Erie, ten cents; and the surrogate may order that the fees for such record copy be paid out of the estate to which the proceeding relates. (*Amended by L. 1916, ch. 160, in effect Sept. 1, 1916.*)

FIRE-ARMS.

Sale of silencers; Penal L., §§ 1897-a, 1898.

FIRE CORPORATIONS.

Incorporation and powers; Membership Corporations L., §§ 100-105.

FISCAL YEAR.

Change of; State Finance L., § 2.

FOREST PRESERVE.

Bond authorization; see Parks.

FORESTRY.

L. 1911, ch. 851, State College at Syracuse (B. C. & G.'s Consol. L., vol. 7, p. 990).

§ 4. Powers and duties of board of trustees.—The board of trustees of such college of forestry shall have the general care, supervision and control of such college and of its officers, and to carry out its objects and purposes shall:

1. Employ and at pleasure remove teachers, experts and all necessary clerks and assistants.

2. Adopt rules, not inconsistent with law, controlling the affairs of such college.

3. Prescribe the course of instruction and the methods of investigation and experiments to be followed in such college, and the degree to be conferred on graduation therefrom.

4. Report to the legislature on or before the first day of February a detailed statement of the general operation of such college for the year ending on the thirtieth day of June then next preceding. (*Amended by L. 1916, ch. 118, § 30, in effect Apr. 3, 1916.*)

FORESTS, FISH AND GAME.

See Conservation Law.

FRAUD.

Obtaining property; Penal L., § 1293-c.

GAME REFUGES.

Reservation for; Conservation L., § 366-a.

GAS.

Price in New York; see New York.

GENERAL BUSINESS LAW.

(L. 1909, ch. 25.)

§ 70. Licenses; private detectives.

A corporation incorporated for the purpose of conducting a bureau for the collection, transmission, and exchange of information generally, and for the making of statements and adjustments and for the publication of reports, must procure a license under this section. Atty. Genl. Opin., 5 State Dep. Rep. 468 (1915).

§ 77. Registered architects.

The status of persons who were known as architects prior to the enactment of the statute is not interfered with, and they may be continued to be known as architects; but, if they desire, the added appellation of "registered architect," they must apply for certification. Atty. Genl. Opin., State Dep. Rep., Adv. Sheet No. 37, p. 117 (1916).

Persons who were, prior to the statute, practicing as architects and who desire to continue as such, without qualifying as registered architects must, under the provision of this section have resided here or had a place of business here while so practicing. Atty. Genl. Opin., State Dep. Rep., Adv. Sheet No. 37, p. 117 (1916).

§ 79. Qualifications; examinations; fees.

The time limitations contained in subdivision 3, are not restrictions on subdivisions 1 and 2. Atty. Genl. Opin., State Dep. Rep., Adv. Sheet No. 37, p. 117 (1916).

The requirement of actual, continuous and exclusive service must be construed in the light of the actual practice of a profession and in favor of the applicant who should not be excluded from admission if the canons of good faith and conduct are satisfied. Atty. Genl. Opin., State Dep. Rep., Adv. Sheet No. 37, p. 117 (1916).

A non-resident may present proof of educational and experience qualifications gained outside of the State, for admission to examination under the statute, or he may make application for exemption from examination under subdivisions 1 and 2 like any resident, but the applicant must be a United States citizen or have declared his intention, and the educational qualifications must have been gained in schools recognized by the administrative officers. Atty. Genl. Opin., State Dep. Rep. Adv. Sheet No. 37, p. 117 (1916).

The board has no power to exclude United States citizens from other states and foreign countries from participating in the benefits of the exemptions under subdivisions 1 and 3. Atty. Genl. Opin., State Dep. Rep., Adv. Sheet No. 37, p. 117 (1916).

§ 125. Rights of persons to whom a warehouse receipt has been negotiated.

When transfer of negotiable receipt operates as transfer of right of possession as well as title of goods described in receipt.—Under the statute, a warehouseman who issues a negotiable receipt for goods, delivered to him for storage, agrees in advance to hold the goods for the account of any person to whom the receipt is negotiated, and by the very act of negotiation loses his position as bailee for the vendor and is transformed, without further assent, into a bailee for the vendee. The moment that a receipt, negotiable in form, is indorsed and delivered, a new

§§ 133, 183.

Theatrical employment; contracts.

L. 1916, ch. 587.

relation of bailor and bailee springs into being, and with the birth of that relation the possession, once held by the bailee for the account of the vendor, is transmuted into a possession for the account of the vendee. The result is a real delivery to the same extent as if the goods had been transported to another warehouse named by the vendee, and with this transmutation of possession the vendor's lien is at an end. *Rummell v. Blanchard* (1915), 216 N. Y. 348.

When action of replevin cannot be maintained against warehouseman for goods transferred to third party by indorsement and delivery of negotiable receipt.—Plaintiffs sold goods, stored in a warehouse, for which they held warehouse receipts, issued in their name, and negotiable in form. These receipts the plaintiffs indorsed and transferred to the purchasers of the goods. Thereafter one of the purchasers tendered the receipts to the warehouseman and requested that new receipts be issued. This was refused because the charges of the warehouseman were not paid. A few days later the purchasers became bankrupt. The goods have never been paid for, and the plaintiffs, on learning that the buyers were insolvent, paid the warehouse charges and demanded delivery. This demand was refused; an action of replevin followed, and thereafter the trustees in bankruptcy of the buyers were substituted as defendants. It was held, that by their transfer of the negotiable warehouse receipts to the purchasers, the plaintiffs lost their lien as vendors and, hence, cannot maintain an action of replevin therefor. *Rummell v. Blanchard* (1915), 216 N. Y. 348.

§ 133. Negotiation defeats vendor's lien.

Merchandise is not in transit unless it has been delivered to a bailee for the purpose of transportation. *Rummell v. Blanchard* (1915), 216 N. Y. 348, *affg.* 167 App. Div. 654, 163 N. Y. Supp. 159.

§ 183. Theatrical employment; contracts.—Every licensed person who shall procure for or offer to an applicant a theatrical engagement shall have executed in duplicate a contract or deliver to the parties as herein set forth a statement containing the name and address of the applicant; the name * address of the employer of the applicant and of the person acting for such employer in employing such applicant; the time and duration of such engagement; the amount to be paid to such applicant; the character of entertainment to be given or services to be rendered; the number of performances per day or per week that are to be given by said applicant; if a vaudeville engagement, the name of the person by whom the transportation is to be paid, and if by the applicant, either the cost of transportation between the places where said entertainment or services are to be given or rendered, or the average cost of transportation between the places where such services are to be given or rendered; and if a dramatic engagement the cost of transportation to the place where the services begin if paid by the applicant; and the gross commission or fees to be paid by said applicant and to whom. Such contracts or statements shall contain no other conditions and provisions except such as are equitable between the parties thereto and do not constitute an unreasonable restriction of business. Forms of such contract and statement in blank shall be first approved by the mayor or commissioner of licenses and his determina-

* Omission in original.

L. 1916, ch. 185.

Miniature cinematograph machines.

§§ 185, 214, 360a.

tion shall be reviewable by certiorari. One of such duplicate contracts or of such statements shall be delivered to the person engaging the applicant and the other shall be retained by the applicant. The licensed person procuring such engagement for such applicant shall keep on file or enter in a book provided for that purpose a copy of such contract or statement. (*Added by L. 1910, ch. 700, and amended by L. 1916, ch. 587, in effect May 18, 1916.*)

§ 185. Fees charged by persons conducting employment agencies.—*Subd. 3 amended by L. 1916, ch. 587, in effect May 18, 1916, as follows:*

3. A licensed person conducting any employment agency under this article shall not receive or accept any valuable thing or gift as a fee or in lieu thereof. No such licensed person shall divide or share, either directly or indirectly, the fees herein allowed, with contractors, subcontractors, employers or their agents, foremen or any one in their employ, or if the contractors, subcontractors or employers be a corporation, any of the officers, directors or employees of the same to whom applicants for employment or theatrical engagements are sent except fees paid for theatrical engagements where the applicant has received his salary in full less such fees and the division of such fees can be made without injury or loss to him. (*Section added by L. 1910, ch. 700, and subd. amended by L. 1916, ch. 587, in effect May 18, 1916.*)

§ 214. Exemption and requirements for miniature cinematograph machines.—The above sections, two hundred and nine, two hundred and ten, two hundred and eleven, two hundred and twelve and two hundred and thirteen, referring to permanent and portable booths, shall not apply (a) to any miniature motion picture machine in which the maximum electric current used for the light shall be three hundred and fifty watts. Such miniature machine shall be operated in an approved box of fireproof material constructed with a fusible link or other approved releasing device to close instantaneously and completely in case of combustion within the box. The light in said miniature machine shall be completely inclosed in a metal lantern box covered with an unremovable roof. (b) To the use or operation of any so-called miniature motion picture apparatus which uses only an enclosed incandescent electric lamp and approved acetate of cellulose or slow burning films, and is of such construction that films ordinarily used on full-sized commercial picture apparatus cannot be used therewith. (*Added by L. 1913, ch. 308, and amended by L. 1916, ch. 185, in effect Apr. 11, 1916.*)

§ 360-a. Definition.—The term "syphon," as used in this article, shall mean and include a syphon head, and all the provisions of this article shall apply to a syphon head, although the same may be detached from the bottle, in the same manner and with the same effect as if not so detached. (*Added by L. 1916, ch. 389, in effect May 2, 1916.*)

§ 367. Trade-marks.

Refilling bottles bearing trade-mark; action to recover penalty; pleading.—In an action to recover a penalty for the violation prescribed by this section for filling any bottle of the kind described therein with, or selling or offering to sell therefrom, any article or substance other than the original contents, the complaint need not allege a publication of the description, specimen or *facsimile* of the trade-mark or label or other private mark as provided in said section. *Jameson & Son v. Reilly* (1915), 90 Misc. 318, 153 N. Y. Supp. 225.

§ 371. Usury forbidden.

Device to conceal usury.—See *Grannis v. Stevens* (1916), 216 N. Y. 583, *affg.* 157 App. Div. 561.

Usurious transfer of interest in vested remainder to secure loan. *Hartley v. Eagle Insurance Co.* (1915), 167 App. Div. 230, 152 N. Y. Supp. 686.

Usurious contract.—An owner of real property, in order to prevent the foreclosure of a second mortgage thereon, procured a broker to sell another second mortgage to be executed at a discount of ten per cent. The broker and the attorney for the holder of the mortgage, which was about to be foreclosed, procured the execution of the new mortgage by the owner and his wife to a stenographer in the office of the attorney, who acted as a mere dummy, and within an hour or two assigned the same to a purchaser procured by the broker, who was not a party to the scheme, and who purchased the bond and mortgage in good faith, relying upon the representations of the broker, and paid the amount thereof less ten per cent. The mortgagor executed an estoppel certificate, certifying to the validity of the mortgage. In an action against the mortgagor and his wife for the foreclosure of the mortgage, they pleaded usury. *Held*, that the transaction constituted an attempt to evade the Usury Law; that there was not an actual *bona fide* contract between the mortgagor and mortgagee, and that the plaintiff is only entitled to recover the consideration actually paid by him. *Schanz v. Sotscheck*, (1915), 167 App. Div. 202, 152 N. Y. Supp. 851.

It seems, that after a note, bond or other obligation has had a *valid inception* it may be sold at any discount the parties agree upon, without violating the statute against usury, which operates only on the contract by which the instrument has its inception. *Schanz v. Sotscheck* (1915), 167 App. Div. 202, 152 N. Y. Supp. 851.

L. 1916, ch. 305. Mayors' conferences; licenses for moving pictures. §§ 13a, 14, 18.

GENERAL CITY LAW.

(L. 1909, ch. 26.)

§ 13-a. **Moneys for maintaining the conference of mayors and other city officials of the state of New York and any of its activities.**—The common council of any city is hereby authorized to appropriate and expend annually, from moneys raised by taxation in such city, a sum to meet the actual and necessary expenses of maintaining and continuing the conference of mayors and other city officials of the state of New York and any of its activities, in this state, for the purpose of devising practicable ways and means for obtaining greater economy and efficiency in the government thereof. The moneys thus appropriated shall be raised by tax on the real and personal property liable to taxation in any such city in the same manner as other city expenses. (*Added by L. 1911, ch. 622, and amended by L. 1916, ch. 215, in effect Apr. 15, 1916.*)

§ 14. **Permits for erection of booths and arches.**—The mayor of any city of the first class and the president of any borough in any city of the first class having a borough form of government, may, in his discretion, grant temporary permits for the erection of booths, stands, arches, overhead passageways, or flag staffs for the stringing of flags or banners for other than advertising purposes, upon or over the sidewalks or streets of such city or borough, as the case may be, for the purpose of a public celebration, exposition, fair or political demonstration; provided, however, that no such permit shall be granted by virtue of this section without the consent of the owners of the abutting property constituting more than one-half of the foot frontage upon both sides of such street in the block formed by the nearest cross-streets on each side of such structure or erection. (*Amended by L. 1916, ch. 305, in effect Apr. 25, 1916.*)

§ 18. **License to operate moving picture apparatus.**—It shall not be lawful for any person or persons, save as excepted in section eighteen-a of this article, to operate any moving picture apparatus and its connections in a city of the first class unless such person or persons so operating such apparatus is duly licensed as hereinafter provided. Any person desiring to act as such operator shall make application for a license to so act to the mayor or licensing authority designated by the mayor, unless the charter of said city so designates, which officer shall furnish to each applicant blank forms of application which the applicant shall fill out. Such officer shall make rules and regulations governing the examination of applicants and the issuance of licenses and certificates. A license shall not be granted to an applicant unless he shall have served as an apprentice under a licensed operator, for a period of not less than six months prior to the date

§§ 18a, 20, 45b.

Licenses for moving pictures; plumbing.

L. 1916, ch. 184.

of the application; the application must be made in writing, and contain a verified statement to that effect; it must be accompanied by the affidavit of the licensed operator to the same effect; before entering upon the period of apprenticeship the applicant must register his name and address with the officer issuing such license. The applicant shall be given a practical examination under the direction of the officer required to issue such license and if found competent as to his ability to operate moving picture apparatus and its connections shall receive within six days after such examination a license as herein provided. Such license may be revoked or suspended at any time by the officer issuing the same. Every license shall continue in force for one year from the date of issue unless sooner revoked or suspended. Every license, unless revoked or suspended, as herein provided, may at the end of one year from the date of issue thereof be renewed by the officer issuing it in his discretion upon application and with or without further examination as he may direct. Every application for renewal of license must be made within the thirty days previous to the expiration of such license. With every license granted there shall be issued to every person obtaining such license a certificate, certifying that the person named therein is duly authorized to operate moving picture apparatus and its connections. Such certificate shall be displayed in a conspicuous place in the room where the person to whom it is issued operates moving picture apparatus and its connections. No person shall be eligible to procure a license unless he shall be of full age. Any person offending against the provisions of this section, as well as any person who employs or permits a person not licensed as herein provided to operate moving picture apparatus and its connections, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding the sum of one hundred dollars, or imprisonment for a period not exceeding three months, or both. (*Added by L. 1911, ch. 252, and amended by L. 1916, ch. 184, in effect Apr. 11, 1916.*)

§ 18-a. Preceding section inapplicable to miniature picture apparatus.— Nothing contained in section eighteen shall be considered to apply to any so-called miniature motion picture apparatus which uses only an enclosed incandescent electric lamp and approved acetate of cellulose or slow-burning films, and is of such construction that films ordinarily used on full-sized commercial picture apparatus cannot be used therewith. (*Added by L. 1916, ch. 184, in effect Apr. 11, 1916.*)

§ 20. Grant of specific powers.

Subd. 13.—*People ex rel. City of New York v. New York Railways Co.* (1916), 217 N. Y. 310, 313.

§ 45-b. Further requirements relating to the business of plumbing.—

1. No person otherwise qualified shall engage in the trade, business or calling of a plumber or of plumbing in a city of this state as employing

or master plumber until he has first procured from the board or department of health in such city or in the city of New York, from the examining board of plumbers a metal plate or sign appropriately lettered or marked "licensed plumber"; such plate or sign to be conspicuously posted in the window of the place where such business is conducted. Any person retiring, abandoning or not actually engaged in such trade, business or calling hereinbefore mentioned, shall surrender to the board or department of health of the city, or in the city of New York, to the examining board of plumbers such metal plate or sign and shall not again engage in such trade, business or calling until he has again procured a metal sign as herein provided.

2. Within thirty days after this section takes effect, the board or department of health in every city of this state and in the city of New York, the examining board of plumbers shall prepare metal plates or signs, at least fourteen inches wide and not less than twenty-two inches in length appropriately lettered or marked "licensed plumber," the lines of each letter to be four inches long and five-eighths of an inch wide; such plate or sign shall, on some part thereof, contain an identification number, which number together with the name and location of the place of business of the person to whom issued shall be recorded in the office of such board or department of health or such examining board of plumbers in the city of New York. Every person now actually engaged or about to engage in the trade, business or calling of a plumber or of plumbing as employing or master plumber, who has otherwise complied with the provisions of law relating to the conduct of such business upon the payment of five dollars to the board or department of health of such city or in the city of New York to the examining board of plumbers shall have issued to him a sign or plate hereinbefore described. Any person to whom such plate or sign has been issued who shall loan, rent, sell or transfer the same to another person whether such person be entitled to receive a similar plate or sign or not, or otherwise wilfully violates the provisions of this section forfeits his license and certificate of qualifications and shall be guilty of a misdemeanor punishable by a fine of not exceeding fifty dollars for the first offense, and not less than one hundred nor more than five hundred dollars for a subsequent offense.

The provisions of this section shall apply to all cities of the state, including the city of New York. (*Added by L. 1916, ch. 305, in effect Sept. 1, 1916.*)

GENERAL CONSTRUCTION LAW.

(L. 1909, ch. 27.)

§ 39. Property, personal.

While the right to operate for oil under a lease, contract or other right or license to operate for oil is declared to be personal property by virtue of this section, it has never been held that the perpetual exclusive right to operate lands other than

§ 110.Decisions.

those occupied could be created except as provided by section 259 of the Real Property Law. *De Hart v. Enright* (1916), 93 Misc. 213, 157 N. Y. Supp. 46.

Certificate of stock in a foreign corporation, owned by a non-resident and indorsed in blank, but deposited in the state for the purposes of sale, are "personal property." *People ex rel. Wynn v. Guferihagen* (1915), 167 App. Div. 572, 152 N. Y. Supp. 679.

§ 110. Application of chapter.

Application to Judiciary Law, § 26.—See *People ex rel. Noble v. Mitchell* (1915), 170 App. Div. 379, 155 N. Y. Supp. 660.

GENERAL CORPORATION LAW.

(L. 1909, ch. 28.)

§ 3. Definitions.

Principal office.—In an action under the Labor Law against a foreign corporation, parol evidence is admissible to show that its principal office is not at the place designated by it as its principal place of business. *Mason & Hanger Co. v. Sharon* (1916), 231 Fed. 861.

§ 6. Corporate names.—1. No certificate of incorporation of a proposed corporation having the same name as a corporation authorized to do business under the laws of this state, or a name so nearly resembling it as to be calculated to deceive, shall be filed or recorded in any office for the purpose of effecting its incorporation, or of authorizing it to do business in this state; nor shall any corporation except a religious, charitable or benevolent corporation or bar association be authorized to do business in this state unless its name has such word or words, abbreviation, affix or prefix, therein or thereto, as will clearly indicate that it is a corporation as distinguished from a natural person, firm or copartnership; or unless such corporation uses with its corporate name, in this state, such an affix or prefix. A corporation formed by the reincorporation, reorganization or consolidation of other corporations or upon the sale of the property or franchises of a corporation, or a corporation acquiring or becoming possessed of all the estate, property, rights, privileges and franchises of any other corporation or corporations by merger, may have the same name as the corporation or one of the corporations to whose franchises it has succeeded. No corporation shall be hereafter organized under the laws of this state with the word "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "title," "casualty," "surety," "fidelity," "savings," "investment," "loan" or "benefit" as part of its name, except a corporation formed under the banking law or the insurance law. (*Amended by L. 1911, ch. 638, L. 1912, ch. 2, L. 1913, ch. 24, and L. 1916, ch. 222, in effect Apr. 17, 1916.*)

Application.—This section applies to the adoption of a trade name by an individual or copartnership. *German-American Button Co. v. Heymsfeld, Inc.* (1915), 170 App. Div. 416, 156 N. Y. Supp. 223.

Infringements.—Name "German-American Hand Crochet Button Works" held to be so similar to "German-American Button Company," as to produce confusion in the trade. *German-American Button Co. v. Heymsfeld, Inc.* (1915), 170 App. Div. 416, 156 N. Y. Supp. 223.

Use of words "Material Men's," presumption that use of similar name was for purpose of obtaining benefit. *Material Men's Mercantile Association v. New York Material Men's Mercantile Association* (1915), 169 App. Div. 843, 155 N. Y. Supp. 706.

Injunction.—When injunction *pendente lite* will not be granted restraining use

§ 15. Certificate of authority of foreign corporation.

of individual name in business. See *Schinasi v. Schinais* (1915), 169 App. Div. 887, 155 N. Y. Supp. 867.

It is the liability to deception and consequent injury which justifies the issuance of an injunction to restrain the use of a name; the court will not refuse relief because damage has not already been done. *German-American Button Co v. Heymsfeld, Inc.* (1915), 170 App. Div. 416, 156 N. Y. Supp. 223.

Name of religious corporation.—An application for an order restraining the operation of an order authorizing "The Polish Roman Catholic Church of the Holy Mother of the Rosary of Buffalo, N. Y." incorporated under the laws of this state and its affairs conducted as an organization acting independently of the jurisdiction of the Roman Catholic Church, to change its name to "The Polish National Catholic Church of the Holy Mother of the Rosary," must be denied. *Matter of Baker* (1916), 94 Misc. 661, 158 N. Y. Supp. 632.

The right to relief by injunction against the unfair and misleading use of a corporate name extends to benevolent, humane and charitable organizations incorporated under the laws of this state. *Matter of Baker* (1916), 94 Misc. 661, 158 N. Y. Supp. 632.

§ 15. Certificate of authority of foreign corporation.

Regulation of foreign corporations.—The transactions of a foreign corporation doing business in this state are dependent upon our statute law and generally, in the absence of a statutory rule, upon the rule of comity. *Martyne v. American Union Fire Ins. Co.* (1915), 216 N. Y. 183, affg. 168 App. Div. 380.

Doing business; what constitutes.—A foreign corporation which has neither capital invested in this state, nor an office for the transaction of business therein, is entitled to maintain an action for goods sold and delivered by one conducting a commission business in this state and who was plaintiff's selling agent under an agreement terminable by either party on sixty days' notice, and a claim that plaintiff was "doing business" in this state at the time of the sale without a certificate in violation of this section is untenable. *Lederwerke v. Capitelli* (1915), 92 Misc. 269, 155 N. Y. Supp. 651.

Maintenance of office in this state.—It is not necessary that a foreign corporation maintain an office in this state in order to transact business here and to come within the prohibition of this section. *Woodridge Heights Construction Co. v. Gipept* (1915), 92 Misc. 204, 155 N. Y. Supp. 363.

The "principal office" of a foreign corporation, at which a notice of claim for personal injuries may be served under the Labor Law, is not synonymous with its principal place of business which it is required to designate in its certificate filed in this State under the General Corporation Law, and parol evidence is admissible to show where its principal office is. *Mason & Hanger Co. v. Sharon* (1916), 231 Fed. 861.

Failure to file certificate; effect.—The fact that a foreign corporation has failed to file the necessary certificate to do business within the state cannot be interposed by it as a shield against proper supervision. *People ex rel. Solomon v. Brotherhood of Painters* (1915), 169 App. Div. 595, 155 N. Y. Supp. 438.

A foreign corporation may maintain a suit to enjoin the use of its trade name by another upon the grounds that such use constitutes unfair competition, although at the time of bringing action it was not licensed to do business in this state and had not paid the tax required by section 181 of the Tax Law. *Hoevel Sandblast Machine Co. v. Hoevel* (1915), 167 App. Div. 548, 153 N. Y. Supp. 35.

In a suit by a foreign insurance company to compel an agent to account for premiums it is no defence that plaintiff never procured the certificate to do business in this state required by section 15 of the General Corporation Law. *Factors Fire Ins. Co. v. Whilden* (1915), 92 Misc. 558, 156 N. Y. Supp. 362.

Where in an action against several defendants, one of which is a foreign corporation, a levy was made upon the property of defendants under a warrant of attachment, and defendants recovered judgment in the action, they, notwithstanding that the corporation defendant has not obtained leave to do business within this state, may maintain an action upon the undertaking given to obtain the attachment to recover the damages caused thereby. *Sterling Manufacturing Co. v. National Surety Co.* (1916), 94 Misc. 604.

Pleading; complaint in action on contract.—Where the complaint of a foreign stock corporation in an action on contract fails to allege, as required by this section, that prior to the making of the alleged contract plaintiff procured a certificate of its compliance with all requirements of law to authorize it to do business in this state, a motion for the dismissal of the complaint should be granted. *Talmage's Sons Co. v. American Dock Co.* (1916), 93 Misc. 535, 157 N. Y. Supp. 445.

§ 16. Proof to be filed before granting certificate.

Agency of person designated not limited to actions arising out of business transacted in this state.—Where a foreign corporation doing business in this state has designated a person as an agent upon whom process against the corporation may be served as provided in the statute the agency of such person is not limited to actions which arise out of business transacted in this state. Where the plaintiff is a resident of this state the service of a summons upon such agent for a cause of action arising in another state is valid and is not an invasion of the rights of the corporation guaranteed by the Federal Constitution. *Bagdon v. Philadelphia & Reading Coal and Iron Co.* (1916), 217 N. Y. 432, revg. 170 App. Div. 594, 156 N. Y. Supp. 647.

Personal service of summons.—In an action in this State for personal injuries suffered by the plaintiff in Pennsylvania while an employee of defendant foreign corporation, personal service of the summons within this State upon the person designated by the defendant should not be set aside. *Smolik v. Pennsylvania & Reading Coal & Iron Co.* (1915), 222 Fed. 148.

Personal service on cashier, director or managing agent.—Where a designation of a person upon whom service of the summons in an action against a foreign corporation may be made as provided by this section is not in force, or if neither the person designated nor an officer specified in section 432(1) of the Code of Civil Procedure can be found with due diligence, and the corporation has property within this state, etc., personal service of the summons may be made by delivering a copy thereof to the cashier, a director, or a managing agent of the corporation within the state. *Jackson v. Schuylkill Silk Mills* (1915), 92 Misc. 442, 156 N. Y. Supp. 219.

The Code of Civil Procedure contemplates that before service of a summons is made on the managing agent of a foreign corporation diligent efforts should be made to serve the officers of the corporation or its designated agent. Service upon the managing agent can be resorted to only after efforts to reach the corporation more directly have failed. Therefore, service upon agents or receivers of a foreign railroad corporation was properly set aside on the ground that the papers do not show that the plaintiff could not in the exercise of due diligence have made service on the receivers within this state. *Gursky v. Blair*, 218 N. Y. 41, revg. — App. Div. —.

§ 22. Prohibition of banking powers.

A corporation organized for the purpose of increasing the business of retail merchants, which proposes to issue checks, stamps or other evidences of debt, and to sell them to merchants who in turn can place them in a bank to be eventually paid out of a fund which has been set aside by the corporation, thereby violates the provisions of this section. *Atty. Genl. Opin.*, 5 State Dep. Rep. 530 (1915).

§ 42. When notice of lapse of time unnecessary.

Application.—This section does not apply to the voluntary dissolution of corporations. Such dissolution must conform to the provisions of section 221. *It seems*, that this section may be applied to proceedings to increase the number of directors, to change the principal place of business, to classify the stock and to extend the corporate existence. Atty. Genl. Opin. 4 State Dep. Rep. 513.

§ 90. Action against officers of corporation for misconduct.

Demand to bring action.—Where the directors in control of a corporation are sought to be charged with misfeasance and malfeasance, a demand upon or a refusal of the corporation to bring the action is not necessary. *Seagrist v. Reid* (1916), 171 App. Div. 755, 157 N. Y. Supp. 979.

Distribution of assets without compliance with law; liability of directors; trust fund for benefit of creditors.—Directors of a corporation who sell and transfer the assets thereof without compliance with the provisions of the General Corporation Law and the Stock Corporation Law, cannot relieve themselves from personal liability in a suit by a judgment creditor of the corporation by merely alleging that at the time of the transfer of the assets a fund was placed in trust for the payment of all debts, and that plaintiff by failing to present his claim lost his rights. To set aside a fund for the purpose of paying debts, but without paying them, is no defense against a creditor whose judgment has been made worthless by the sale of all the debtor's property, without notice, and the division of the proceeds among the stockholders and directors. *Shalek v. Jetter* (1915), 171 App. Div. 364.

§ 116. Entry of judgment and filing certified copies thereof.—The final judgment in an action brought as prescribed in this article shall be entered in the office of the clerk of the county in which the principal business office, or the principal place of business of the corporation is located, and if it is adjudged that such corporation be dissolved, a certified copy of such judgment shall, if a banking corporation, be filed in the office of the superintendent of banks; if an insurance corporation, in the office of the superintendent of insurance; and if a business, transportation, railroad or membership corporation, in the office of the secretary of state. (*Added by L. 1916, ch. 163, in effect Apr. 7, 1916.*)

§ 170. Petition for voluntary dissolution of corporation.

Voluntary dissolution denied; maladministration of corporate affairs.—Application for the voluntary dissolution of a domestic corporation instituted on the petition of its board of directors and opposed by certain creditors who are holders of its bonds. It appeared that the company was incorporated to deal in real estate, and also to conduct a general brokerage business and buy and sell securities, etc., while as a matter of fact the only business actually carried on by it was speculation on a margin. After the formation of the company and on the motion of a director and officer he was authorized to receive all the moneys of the company and to invest the same in his own discretion for its benefit, but in his own name, and to buy and sell securities at his own option, and at such times and in such manner as to him seemed best. It further appeared that said officer, who was subsequently elected treasurer as well as president, had possession of all the moneys of the corporation, which he deposited to his individual account and mingled with his own money; that he had speculated with said moneys, had kept no books of account, and that his transactions had resulted in a loss, although he had paid dividends to stockholders at certain periods. On all the evidence, it was held, that as the corpora-

L. 1916, ch. 53.

Permanent receiver.

§§ 191, 221, 256, 306

tion and its creditors have an apparent cause of action against the officers and directors of the corporation for the maladministration of its affairs, the petition for the voluntary dissolution should be denied, with costs to be paid by the petitioners personally. *Matter of Great Northern Trading Co.* (1915), 168 App. Div. 536, 153 N. Y. Supp. 213.

§ 191. Permanent receiver.—Upon an application for a final order, if it appear to the court in a case specified in section one hundred and seventy of this chapter that the corporation is insolvent, or, in a case specified either in that section, or in sections one hundred and seventy-one and one hundred and seventy-two of this chapter, that for any reason a dissolution of the corporation will be beneficial to the interests of the stockholders and not injurious to the public interests, the court must make a final order dissolving the corporation, and appointing one or more receivers of its property. But in the case of a solvent corporation, the court may, if there is no objection by creditors, dispense with a receiver and provide in the final order for the distribution of the assets. The order shall be entered in the office of the clerk of the county in which the principal business office, or the principal place of business of the corporation is located, and a certified copy thereof, if a banking corporation, shall be filed in the office of the superintendent of banks; if an insurance corporation, in the office of the superintendent of insurance; and if a business, transportation, railroad or membership corporation, in the office of the secretary of state. Upon the entry of the order and the filing of a certified copy thereof as herein provided, the corporation is dissolved. A receiver appointed under this section shall have all the powers, duties and liabilities of receivers under article eleven of this chapter. (*Amended by L. 1909, ch. 240, and L. 1916, ch. 53, in effect Mch. 20, 1916.*)

§ 221. Dissolution of stock corporation before time limit.

Section 42 of the General Corporation Law does not apply to voluntary dissolution. *Atty. Genl. Opin., 4 State Dep. Rep. 513 (1915).*
 The three days' notice to each director, provided by this section, may be dispensed with by written waiver duly executed before the meeting. *Atty. Genl. Opin., 5 State Dep. Rep. 450 (1915).*

§ 256. Refunding consideration of subsisting contracts.

See generally, *Martyne v. American Union Fire Ins. Co.* (1915), 168 App. Div. 380, 153 N. Y. Supp. 433.

§ 306. Appointment of receivers of property of corporations.

A receiver in supplementary proceedings may not be appointed where the judgment debtor is a domestic corporation. *Banker Contracting Co. v. Callahan Contracting Co.* (1915), 92 Misc. 241, 245, 155 N. Y. Supp. 543.

GENERAL MUNICIPAL LAW.

(L. 1909, ch. 29.)

§ 5. **Temporary loans.**—Moneys shall not be borrowed by a municipal corporation on temporary loan, except in anticipation of the taxes of the current fiscal year, and for the purposes for which such taxes are levied, and shall not be in excess of the amount of such taxes. Such loans shall be payable out of the taxes on account of which such loans are made, and in no case shall interest run on any such loan after such taxes are paid into the treasury of the corporation. (*Amended by L. 1916, ch. 166, in effect Apr. 7, 1916.*)

§ 6. **Funded debt.**

A fund raised by a fire district under a duly adopted resolution is a funded debt within the meaning of this section. *American Metal Ceiling Co. v. New Hyde Park Fire District* (1915), 91 Misc. 236, 154 N. Y. Supp. 661.

§ 51. **Prosecutions of officers for illegal acts.**

Construction of statute; nature of remedy.—The equitable remedy of an injunction under the General Municipal Law is to be granted or withheld in accordance with the general principles which govern the exercise of equitable jurisdiction. Mere inaction by a public officer will not justify the intervention of a court of equity where the legal remedy by mandamus is available and adequate. *Southern Leasing Co. v. Ludwig* (1916), 217 N. Y. 100, revg. 168 App. Div. 233, 153 N. Y. Supp. 545.

The statute giving a taxpayer a right of action was not intended to subject the official acts of boards, officers or municipal bodies acting within their jurisdiction and discretion to the supervision of the courts, simply because some taxpayer might conceive the same to be unwise, improvident or based on errors of judgment. *McBride v. Ashley* (1915), 91 Misc. 585, 154 N. Y. Supp. 1010.

Action under § 1925 of Code of Civil Procedure.—A taxpayer's action to restrain waste or injury to the property or funds of a municipality, or to prevent any illegal official act on the part of the officers of such municipality, will, in a proper case, lie under the provisions of section 1925 of the Code of Civil Procedure, or section 51 of the General Municipal Law. The provisions of section 51 of the General Municipal Law are somewhat broader in their scope, and provide somewhat more specifically for an action to prevent illegal official acts, and, in a proper case, restitution; but the principles governing an action brought under either of the aforesaid provisions are substantially the same. *McBride v. Ashley* (1915), 91 Misc. 585, 154 N. Y. Supp. 1010.

The term "waste or injury" as used in this section includes only illegal, wrongful or dishonest acts. *Daly v. Haight* (1915), 170 App. Div. 459, 156 N. Y. Supp. 538.

When action may be maintained.—An action may be maintained under this section by a taxpayer of the city of New York to restrain the superintendent of buildings from approving the plans for, and permitting, the erection or remodeling of a theatre in that city where such plans do not comply with the provisions of the Building Code. The erection of a theatre in violation of such provisions is a public nuisance which could be restrained by the public authorities, and as the granting of a permit to erect such a building is also an illegal act, it may be

restrained in a taxpayer's action. *Altschul v. Ludwig* (1916), 216 N. Y. 459, affg. 170 App. Div. —, 155 N. Y. Supp. 1091.

The mere illegality of an official act in and of itself does not justify injunctive relief in the actions authorized to be brought by a taxpayer under this section, but when waste or injury is not involved, it must appear that in addition to being an illegal official act the threatened act is such as to imperil the public interests or calculated to work public injury or produce some public mischief. *Altschul v. Ludwig* (1916), 216 N. Y. 459, affg. 170 App. Div. —, 155 N. Y. Supp. 1091.

A taxpayer's action is maintainable either to prevent an illegal act against, or waste or injury to, the property of a municipality. *Carpenter v. Wise* (1915), 92 Misc. 246, 155 N. Y. Supp. 996.

A taxpayer may by action under this section prevent any illegal official act or waste or injury and may compel the restoration of all property and funds. But it is only when the waste or injury is by collusion or otherwise or by default in permitting a wrongful judgment or by retaining or failing to pay over any public funds or property that the court will enforce the restitution and recovery, and also in its discretion declare the official responsible, financially, therefor. *Daly v. Haight* (1915), 170 App. Div. 469, 156 N. Y. Supp. 538.

Where the complaint in a taxpayer's action alleges that the defendant municipality, the owner of a valuable water power, has a cause of action against the other defendant, the owner of the water power next below that of the city, who as alleged is about to construct a dam below that of the city to a height which will cause the water to set back upon the city's land thereby considerably reducing it power, and that the governing body of the municipality had consented that the other defendant might take and appropriate to his own use without compensation the city's water power and wrongfully neglects and refuses to commence an action against him to restrain the construction of said dam, the allegations of the complaint show an illegal act—an act contrary to constitutional provisions and the charter of the municipality, and states a cause of action under this section of the General Municipal Law. Said action is maintainable against both defendants, the plaintiff in that respect under this section taking the place of the municipality as against the other defendant and then joining the municipality as a proper party. *Carpenter v. Wise* (1915), 92 Misc. 246, 155 N. Y. Supp. 996.

Where the superintendent of buildings in the city of New York has refused to revoke a permit theretofore given by him or to interfere with the work of construction being carried on under the permit, a taxpayer's action under this section of the General Municipal Law is not the proper remedy. That statute was designed to give a remedy under conditions where none had been available before, not to reach conditions and correct evils where the existing law gave an effective remedy. *Southern Leasing Co. v. Ludwig* (1916), 217 N. Y. 100, revg. 168 App. Div. 233, 153 N. Y. Supp. 545.

The Terminal Station Commission of the City of Buffalo, acting under chapter 842 of the Laws of 1911, entered into a contract with the Delaware, Lackawanna and Western Railroad and the New York, Lackawanna and Western Railroad Company, the purpose of which was to effectuate and carry out plans for a railroad terminal in said city theretofore adopted by the commission so as to eliminate grade crossings and afford better terminal facilities. Suit by a taxpayer to declare the contract illegal, null and void, as in violation of the State and Federal Constitutions, of chapter 842 of the Laws of 1911, and as contrary to public policy. Provisions of the contract and of the act of 1911 examined, and *held*, that a judgment dismissing the complaint should be affirmed. *McCutcheon v. Terminal Station Commission* (1915), 168 App. Div. 301, 154 N. Y. Supp. 711.

Action against town officers to compel repayment of moneys expended; town and payees not necessary parties; pleading; misappropriation of moneys sufficiently al-

§§ 86-b, 90.

Withdrawing percentages under contracts.

L. 1916, ch. 176.

leged.—In an action brought by a taxpayer against a town supervisor and the superintendent of highways to compel them to restore moneys to the town, the town itself is not a necessary party. *It seems*, however, that the town may voluntarily come in and make itself a party. Neither need the persons to whom the illegal payments are alleged to have been made be necessarily joined as defendants, for the action is not to cancel a contract or to annul their personal rights. An allegation that the moneys were misapplied and illegally paid with knowledge that it was without warrant of law is sufficient, and it need not be averred in the words of the Code that the misappropriations were "waste or injury to" the funds of the town, for that would be a mere conclusion of law. *Hicks v. Cocks* (1915), 167 App. Div. 862, 153 N. Y. Supp. 776.

An action may be brought by a taxpayer to set aside audits made by the board of supervisors and to recover on behalf of the county moneys alleged to have been allowed to a supervisor for services in preparing the tax rolls of the town, where certain items for which payment had been made were not properly chargeable to the county under section 23 of the County Law. *Smith v. Hedges* (1915), 169 App. Div. 115, 154 N. Y. Supp. 867.

Where in a taxpayer's action against a supervisor and a person employed pursuant to a resolution of the town board to recover town moneys paid by the former to the latter for services rendered the court finds that there was no intentional wrongdoing by either the defendants; that all the moneys were paid before the commencement of the action, and that the supervisor did not receive any of them, it was error to give judgment for the plaintiff. *Daly v. Haight* (1915), 170 App. Div. 469, 156 N. Y. Supp. 538.

The legal capacity of a plaintiff to maintain such an action is not affected by the mere fact that he is a tenant in common of the lands assessed on which he has paid the taxes, and that they are listed on the assessment rolls in the name of the estate of plaintiff's ancestor. *Smith v. Hedges* (1915), 169 App. Div. 115, 154 N. Y. Supp. 867.

§ 86-b. Retained percentages may be withdrawn.—A clause may be inserted in any contract hereafter made or awarded by any municipal corporation, or any public department or official thereof, providing that the contractor may, from time to time, withdraw the whole or any portion of the amount retained from payments to the contractor pursuant to the terms of the contract, upon depositing with the comptroller or disbursing officer of the municipality, corporate stock or bonds of the municipality of a market value equal to the amount so withdrawn. The said clause may further provide that the municipality shall, from time to time, collect all interest or income on the stock or bonds so deposited, and shall pay the same, when and as collected, to the contractor who deposited the stock or bonds. The said clause may further provide that if the deposit be in the form of coupon bonds, the coupons as they respectively become due shall be delivered to the contractor. The said clause may further provide that the contractor shall not be entitled to interest or coupons or income on any of the deposited stock or bonds, the proceeds of which shall be used or applied by the municipality, pursuant to the terms of the contract. (*Added by L. 1916, ch. 176, in effect Apr. 10, 1916.*)

§ 90. Workmen's compensation insurance on public works.—Each contract to which a municipality, or any public department or official thereof,

L. 1916, ch. 504.

Boards of child welfare.

§§ 146, 150, 152.

is a party and which is of such a character that the employees engaged thereon are required to be insured by the provisions of chapter forty-one of the laws of nineteen hundred and fourteen, known as the workmen's compensation law, and acts amendatory thereto, shall contain a stipulation that the same shall be void and of no effect unless the person or corporation making or performing the same shall secure compensation for the benefit of, and keep insured during the life of said contract, such employees, in compliance with the provisions of said law. (*Added by L. 1916, ch. 478, in effect May 9, 1916.*)

§ 146. Devises and bequests restricted.

Validity of trust for purpose of public library and parks. *Durkee v. Smith* (1916), 171 App. Div. 72, 156 N. Y. Supp. 920.

§ 150. Appointment of boards in cities.—The board of child welfare of a city wholly including one or more counties shall consist of nine members. The members of the board shall be appointed by the mayor for such terms that the term of one member of the board shall expire each year thereafter. Upon the expiration of the term of office of a member of the board, his successor shall be appointed by the mayor for a full term of nine years. If a vacancy occur, otherwise than by expiration of term in the office of a member of the board, it shall be filled for the unexpired term. At least three members of the board shall be women. The members of such a board heretofore appointed by the mayor are continued in office until the expiration of their terms, respectively. The additional appointive member of such board shall be appointed by the mayor, within ten days after this section as amended takes effect, for a full term of nine years. (*Added by L. 1915, ch. 228, and amended by L. 1916, ch. 504, in effect May 10, 1916.*)

§ 152. General powers and duties of board.—*Subd. 4 amended by L. 1916, ch. 504, in effect May 10, 1916, as follows:*

4. Establish rules and regulations for the conduct of its business, which shall provide for the careful investigation of all applicants for allowances and the adequate supervision of all persons receiving allowances; such investigations and supervisions to be made by the board and without incurring any unnecessary expense. Reports must be filed at least quarterly by the agents, visitors or representatives of the board, with respect to the families receiving allowances granted by the board. (*Section added by L. 1915, ch. 228, and subd. amended by L. 1916, ch. 504, in effect May 10, 1916.*)

GUARDIANS.

See also Surrogate's Courts.

Code of Civil Procedure.

§ 477-a. Appointment of guardians ad litem and special guardians by supreme court without application.—The supreme court may appoint a

Code Civ. Pro. § 477a

Appointment of guardians ad litem.

L. 1916, ch. 440.

guardian ad litem or special guardian for an infant or an incompetent person, at any stage in any action or proceeding, when it appears to the court necessary for the proper protection of the rights and interest of such infant or incompetent person and fix the fees and compensation of such guardians, except when it is otherwise expressly provided by law. (*Added by L. 1916, ch. 440, in effect Sept. 1, 1916.*)

HEALTH OFFICER.

See Quarantine.

L. 1916, ch. 217. Division engineers; district and co. superintendents. §§ 3, 17, 33.

HIGHWAY LAW.

(L. 1909, ch. 30.)

§ 3. Classification of highways.—*Subd. 4 amended by L. 1916, ch. 578, in effect May 17, 1916, as follows:*

4. Town highways are those constructed, improved or maintained by the town with the aid of the state, under the provisions of this chapter, including all highways in towns, outside of incorporated villages constituting separate road districts, which do not belong to either of the three preceding classes.

§ 15. General powers and duties of commissioner of highways.

The supervisory powers of the state commissioner of highways involve wide discretion as to the construction and maintenance of the highway system of the state, and the exercise of this discretion necessarily affects the manner in which the funds to be raised by the state, counties and towns relating to such construction and maintenance shall be collected and disbursed. *People ex rel. Carlisle v. Board of Supervisors* (1916), 217 N. Y. 424, affg. 164 App. Div. 922.

§ 17. Duties of division engineers.—*Subd. 9 added by L. 1916, ch. 217, in effect Apr. 15, 1916, as follows:*

9. When the corners of the boundaries of counties, cities, villages and subdivision lots of towns shall have been located, as provided in subdivision nine of section thirty-three of this chapter, it shall be the duty of the division engineer to accurately set a monument at such corner, except in cases where the improvement of such highway or road has been completed prior to the location of such corner as provided in such subdivision. Such monument shall be of some durable material and shall be so set that the top thereof shall be on a level with the surface of such improved highway or road. The cost and expense of such monuments and the setting of the same shall be a state charge.

§ 33. General powers and duties of district or county superintendents.—*Subd. 9 renumbered subd. 10 and new subd. 9 added by L. 1916, ch. 217, in effect Apr. 15, 1916, as follows:*

9. Accurately ascertain and locate the corners of the established boundaries of counties, towns, cities and villages and, where townships were originally subdivided into lots to accurately ascertain and establish such lot corners if any such corners will be located within the bounds of the improved part of any state or county highway or county road.

If the district or county superintendent shall not be a civil engineer he may hire a competent civil engineer to locate such corners. In either case he may employ such other assistants as may be necessary, the cost and expense thereof to be a county charge.

Nothing in this subdivision contained, however, shall be construed to extend to the location of the corner or other boundaries of city, or village lots, or farm lands, except as they may be, incidentally, the corners of, the boundaries of counties, towns, cities, villages or original subdivisions of towns, except, also, that where the corners or boundaries of city or village lots, or farm lands, have been located and a monument placed before the improvement of such highway, the owner of such city or village lots or farm lands may point out to such engineer the location of such monument, and upon such owner furnishing a suitable monument, it shall be the duty of such engineer to erect such monument in the manner hereinbefore provided.

§ 41. **Submission of proposition for appointment or election of town superintendent.**—Upon the written request of twenty-five taxpayers of any town, made and filed as provided in the town law, the electors thereof may, at a special or biennial town meeting, vote by ballot upon a proposition providing for the appointment of a town superintendent in such town. Such proposition shall be submitted in the manner provided by law for the submission of questions or propositions at a town meeting. If such proposition be adopted, the town board of the town shall, upon the expiration of the term of office of the elected town superintendent, appoint a town superintendent therefor, who shall take and hold office for the term hereinafter prescribed. Upon like request the electors of any town in which the office of superintendent of highways is appointed may, in like manner, determine that the superintendent of highways for such town shall thereafter be elected, as provided in section forty of the highway law. (*Amended by L. 1916, ch. 47, in effect Mch. 15, 1916.*)

§ 48. **Contracts for the construction of town highways.**—The town board of any town may provide that the construction of new highways and bridges, or the permanent improvement or reconstruction of existing highways and bridges or repairing, rebuilding or replacing walks on highways less than two rods in width pursuant to the provisions of sections forty-seven, sixty-two and ninety-seven of this chapter, the cost of which will exceed five hundred dollars, shall be done under contracts. All such contracts shall be awarded by the town superintendent, in accordance with estimates, plans and specifications to be furnished by the district or county superintendent, or by the commission, as provided in this chapter, to the lowest responsible bidders, after advertisement once a week, for three consecutive weeks, in a newspaper published in the town where the work is to be performed, or if no newspaper is published therein, in a newspaper published at some other place in the county, having the largest circulation in said town. All bids for such work shall be opened in public and shall be filed in the office of the town clerk. No such contract shall be awarded, unless it be approved by the district or county superintendent, as to its form and efficiency. The person to whom such contract is awarded shall

execute a bond to the town, in a sum equal to one-half of the amount of the contract, with two or more sureties to be approved by the town board, conditioned for the faithful compliance with the terms of the contract, and the plans and specifications and for payment of all damages which may accrue to the town, because of a violation thereof. When such work is completed pursuant to the terms of such contract, and the plans and specifications therefor, and accepted by the district or county superintendent and town board, as being in accordance therewith, the cost of the work under the contract shall be paid out of moneys available therefor, in the same manner as other highway expenses. Payments made under such contract shall be upon certificates issued to the contractor by the district or county superintendent, to the effect that the work has been done under and in accordance with the terms of such contract, and the plans and specifications. All work done under any such contract shall be under the supervision of the district or county superintendent, or some person designated by him. The town superintendent shall file all contracts, awarded under this section or as provided in this chapter, for the construction, improvement or repair of town highways and bridges, or for repairing, rebuilding or replacing a walk, with the town clerk of the town within ten days after their execution. (*Amended by L. 1913, ch. 621, L. 1914, ch. 413, L. 1915, ch. 322, and L. 1916, ch. 578, in effect May 17, 1916.*)

§ 60. **Drainage, sewer and water pipes, cattle passes or other crossings in highways.**—The town superintendent may, with the consent of the town board, upon the written application of any resident or taxpayer of his town or a corporation, grant permission for an overhead or underground crossing or to lay and maintain drainage, sewer and water pipes under ground within the portion therein described of a town highway. If the highway is a state or county highway such permission shall be granted with the consent of the county or district superintendent instead of the town board. Permission shall not be granted for the laying and maintaining of such pipes under the traveled part of the highway, except across the same, for the purposes of sewerage, and draining swamps or other lands, and supplying premises with water. Such permission shall be granted upon the condition that such pipes and hydrants or crossing shall be so laid, set or constructed as not to interrupt or interfere with public travel upon the highway, and upon the further condition that the applicant will replace the earth removed and leave the highway in all respects in as good condition as before the laying of said pipes, or construction of such crossings, and that such applicant will keep such pipes and hydrants or crossing in repair and save the town harmless from all damages which may accrue by reason of their location in the highway, and that upon notice by the town superintendent the applicant will make the repairs required for the protection or preservation of the highway. The permit of the town superintendent, with the consent of the town board or county or district super-

intendent, and the acceptance of the applicant, shall be executed in duplicate, one of which shall be filed in the office of the town clerk and the other in the office of the district or county superintendent. In case the applicant shall fail to make any of the repairs required to be made under the permit, they may be made by the town superintendent at the expense of the applicant, and such expenses shall be a lien, prior to any other lien, upon the land benefited by the use of the highway for such pipes, hydrants or structures. The town superintendent may revoke such permit upon the applicant's failure to comply with any of the conditions contained therein. (*Amended by L. 1916, ch. 462, in effect May 9, 1916.*)

§ 74. Liability of town for defective highway.

Notice required.—The purpose of the notice required by section 74 of the Highway Law before bringing an action against a town for damages is to fairly apprise the officers of the town of the nature and circumstances of the accident, so that they may investigate the same fully and intelligently, and with certainty as to the place and conditions of the accident. Such a notice, to the effect that on a certain date while the plaintiff was driving his horse to a certain place, and when he was about twenty-five rods below the foot of a certain hill in the town stated, the horse stepped through a hole in a sluice and broke her leg, making it necessary to shoot her, damaging the plaintiff to a certain sum, no part of which has ever been paid, is a substantial compliance with the statute. *It seems*, that the notice need not be framed with the same particularity as a complaint, and need not contain facts showing that the commissioner of highways was negligent, and that the plaintiff was free from negligence. *Griffin v. Town of Ellenburgh* (1916), 171 App. Div. 713, 157 N. Y. Supp. 813.

§ 90. Estimate of expenditures for highways and bridges.

Moneys raised as provided by sections 90–101 cannot be used either for construction or maintenance of town highways constructed under sections 320 or 320-a of the Highway Law. *Opinion of Attorney General* (1916), *State Dept. Reports*, Adv. Sheet 41, p. 98.

§ 94. Limitations of amounts to be raised.—The amounts to be raised by tax upon the vote of a town board, as provided in this article, shall be subject to the following limitations:

1. The amount to be levied and collected in each year for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet and board walks or renewals thereof, on highways less than two rods in width, shall not be less than the amount prescribed under subdivision one of section ninety.

2. Not more than fifteen hundred dollars shall be levied and collected in any one year in any town for the repair and construction of a bridge unless by unanimous consent of all members of the town board, but in no case shall more than three thousand dollars be levied and collected unless duly authorized by the vote of a town meeting.

3. Not more than five hundred dollars shall be levied and collected in any one year in any town for the purchase or repair of stone crushers, steam rollers, traction engines or road machines for grading and scraping,

L. 1916, ch. 634.

Town bonds;

§§ 98, 106, 120.

tools and implements, unless duly authorized by the vote of a town meeting.

4. Not more than fifteen hundred dollars shall be levied and collected in any one year in any town for the repair or construction of any highway or bridge which has been damaged or destroyed as provided in section ninety-three or which has been condemned by the commission as provided in this chapter, unless by unanimous consent of all members of the town board, but in no case shall more than three thousand dollars be levied and collected unless duly authorized by the vote of a town meeting. (*Amended by L. 1915, ch. 322, and L. 1916, ch. 578, in effect May 17, 1916.*)

§ 98. **Issue and sale of town bonds.**—The board of supervisors shall, from time to time, impose upon the taxable property of the town a tax sufficient to pay the principal and interest of such obligations as they shall become due. The supervisors and town clerk shall each keep a record, showing the date and amount of the obligations issued, the time and place of their payment, and the rate of interest thereon. The obligations shall be delivered to the supervisor of the town, who shall dispose of the same for not less than par and apply the proceeds thereof for the purposes for which they were issued. (*Amended by L. 1916, ch. 578, in effect May 17, 1916.*)

§ 106. **Expenditures for bridges and other highway purposes.**—The moneys levied and collected, or raised by the issue and sale of bonds or certificates of indebtedness in anticipation of taxes, as provided in this article, for purposes other than the repair or improvement of highways, as specified in the preceding section, shall be paid out by the supervisor upon the written order of the town superintendent. An account shall not be so paid unless the expenditure be in accordance with the annual estimate of the town superintendent, as approved or modified by the town board, or be authorized by the town board or by a vote of a town meeting, as provided in this article, or be lawfully a charge upon the town. Except as herein otherwise provided the provisions of the town law relating to the audit of town accounts and claims shall apply to accounts and claims against the town arising under this chapter. (*Amended by L. 1916, ch. 463, in effect May 9, 1916.*)

§ 120. **Highways to be constructed or improved by the state.**—*Subd. 8-a added by L. 1916, ch. 634, in effect May 20, 1916, as follows:*

Route 8-a. Commencing at the New York State Women's Relief Corps Home near the village of Oxford in the county of Chenango, running thence southerly and westerly to and into the village of Oxford and connecting with route number eight therein, upon and along the existing public highway between such points.

L. 1916, ch. 634, § 2.—The sum of fifteen thousand dollars (\$15,000), or so much thereof as may be necessary, is hereby appropriated out of any moneys in the treasury not otherwise appropriated, to be expended by the state commission of

§§ 130, 134

Acceptance of county highway.

L. 1916, ch. 460.

highways in the manner provided by the provisions of article six of the highway law relating to the improvement of state routes.

§ 130. Contracts for construction or improvement of highways

The Commissioner of Highways has authority to reject the lowest bids and award the contract to the next lowest bidder, or may reject all the bids and readvertise the work, and may adopt whichever course is deemed for the best interest of the State, but the course to be pursued in that respect is one of policy, the responsibility therefor resting upon the Highway Department. Atty. Genl. Opin., 6 State Dep. Rep. 413 (1915).

Where a contractor has defaulted in performing several contracts, his bid on another contract, although the lowest, may be rejected. Atty. Genl. Opin., 6 State Dep. Rep. 413 (1915).

The State Commissioner of Highways may pay over the balance of the money due upon a contract to the assignee thereof, unless conflicting claims are made to it, notwithstanding the fact that the contractor refuses to enter into or sign a special agreement covering the changes made in the contract. Atty. Genl. Opin. 6 State Dep. Rep. 491 (1916).

Retention of ten per cent of contract price.—The provision of this subdivision that "ten per centum of the contract price shall be retained until the entire work has been completed and accepted" is mandatory, and a contractor cannot be paid any portion of such amount until his contract has been finally completed and the road accepted. Atty. Genl. Opin., 6 State Dep. Rep. 428 (1915).

§ 134. Acceptance of county highway.—Upon the completion of a county highway or section thereof, constructed or improved under a contract let as provided in this article, the division engineer shall inspect the same and if it be completed as provided in the contract he shall thereupon so report to the commission, which shall, if it approve, notify, in writing, the county or district superintendent and the board of supervisors of the county in which such highway or section thereof is located that it will accept the highway within twenty days from the date of such notice unless protest in writing be filed with the commission by such district or county superintendent or by the board of supervisors. In case a protest is filed, the commission shall hear the same, and if it is sustained, the commission shall delay the acceptance of the highway or section thereof until it be properly completed. In case no protest is filed, the highway or section thereof shall at the expiration of the said twenty days be deemed finally completed and accepted on behalf of the county and the state, and shall thereafter be maintained as provided in this chapter. (*Amended by L. 1911, ch. 646, and L. 1916, ch. 460, in effect May 9, 1916.*)

Construction of section. *People ex rel Carlisle v. Board of Supervisors* (1916), 217 N. Y. 424, affg. 164 App. Div. 922.

Acceptance of a highway may be revoked by the state commissioner of highways at any time before the final account is paid, where such acceptance was procured through fraud, mistake, concealment or misrepresentations. Atty. Genl. Opin., 4 State Dep. Rep. 547 (1915). But where the work has been done according to contract and payment made, and no fraud exists, the commissioner cannot revoke or rescind the acceptance of a highway. Atty. Genl. Opin., 5 State Dep. Rep. 451 (1915).

§ 137. **State and county highways in villages.**—A state or county highway may be constructed through a village, unless the street through which it runs has, in the opinion of the commission, been so improved or paved as to form a continuous and improved highway of sufficient permanence as not to warrant its reconstruction, in which case such highway shall be constructed or improved to the place where such paved or improved street begins. A state or county highway within a village shall be of the same width and type of construction as the highway outside of the village which connects with the highway within the village, unless a greater width or different type of construction is desired by the municipality, in which case the board of trustees of such village shall by resolution petition the commission to provide the width and type of construction desired. The additional expense caused by the increased width or different type of construction or both shall be borne wholly by the village. The commission shall, in its discretion, upon receipt of such petition, if filed prior to the advertisement for bids, provide for the width and type of construction described in such petition. Whenever the commission shall have approved such a village petition the plans, specifications and estimates of cost, together with an estimate showing the additional cost to be borne by the village, to provide for the greater width or different type of construction or both, shall be submitted to the board of trustees who, if it approve such plans, specifications and estimate of cost, shall by resolution appropriate the funds necessary to provide for the portion of the cost of construction to be borne by the village. Such fund shall, prior to the award of the contract, be deposited by the village with the state comptroller subject to the draft or requisition of the state commission of highways, and a certified copy of the resolution shall be filed with the commission. The moneys so required shall be raised by tax or from the issue and sale of bonds as provided in the village law. Upon the completion of a highway within a village where a portion of the cost is borne by the village the commission shall transmit to the board of trustees a statement showing the actual cost of the additional width or changed construction including a proportionate charge for engineering, and shall notify the village clerk that it will accept the work within twenty days from the date of such notice, unless protest in writing against the acceptance shall be filed by such clerk with the commission. In case a protest is filed the commission shall hear the same and if it is sustained the commission shall delay the acceptance of the highway or section thereof until the same be properly completed. If no protest is filed the highway or section thereof shall at the expiration of the said twenty days be deemed finally completed and accepted on behalf of the village and the state, and shall thereafter be maintained in the manner provided in this chapter for the maintenance and repair of state and county highways. The provisions of the village law, special village charters and other general or special laws relative to the pavement or improvement of streets and the assessment and payment of the cost thereof shall apply, as far as

may be, to such additional construction and the assessment and payment of the cost thereof, except that the provisions of any general or local act affecting the pavement or improvement of streets or avenues in any village and requiring the owners, or any of the owners, of the frontage on a street to consent to the improvement or pavement thereof, or requiring a hearing to be given to the persons who, or whose premises, are subject to assessment, upon the question of doing such paving or making such improvement shall not apply to the portion of the improvement or pavement of a state or county highway the expense for which is required to be paid by the village to the state.

The provisions of this act shall not prevent the improvement by state aid under the statute as it existed prior to the passage of this act, of streets in cities of the second and third class, where, prior to the passage of this act, highway numbers had been assigned as provided by article six of this act; nor shall the provisions of this act prevent the improvement in such cities of streets heretofore petitioned for and approved, in cases where the proposed improvement of each street does not exceed one and one-half miles in length; but the total mileage of all such streets not exceeding one and one-half miles in length, shall not in the aggregate exceed four miles.

Wherever plans for such improvement in a city of the second class have been approved and a highway number assigned, and the work is ready for contract as hereinbefore described and the common council of such city has appropriated and made available the city's share of the cost of such improvement, the city treasurer of such city is hereby authorized and empowered to borrow a sufficient amount in anticipation of the collection thereof, and to pledge the faith and credit of the city for the payment of such amount when due, with interest, and is further authorized, empowered and directed to deposit such moneys with the state comptroller in the same manner as is provided by this section with regard to the improvement of village streets. (*Amended by L. 1910, ch. 233, L. 1911, ch. 88, L. 1912, ch. 88, L. 1913, chs. 131, 319, and L. 1916, ch. 571, in effect May 15, 1916.*)

§ 138. Connecting highways in villages.—The board of trustees of a village may, by resolution, petition the commission for the construction or improvement of a highway to connect streets or highways within the village which have been paved or improved with county highways which have been heretofore built under the provisions of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof. If in the judgment of the commission public convenience requires the construction or improvement of such connecting highway, the commission shall cause plans, specifications and estimates to be prepared, and shall cause the same to be transmitted to the board of supervisors of the county wherein such highway is situated. The board of supervisors shall thereupon adopt a resolution providing for such construction or improvement as provided in this article. The payment of the cost of such construction or improvement shall be provided for in such resolu-

L. 1916, ch. 461.

Additional width; cost to town.

§ 138a

tion and such payment shall be made in the same manner as provided for other county highways. A certified copy of such resolution shall be filed in the office of the commission. The construction or improvement of such connecting highway shall then be taken up in the order and manner provided in this article for the construction or improvement of county highways. If it is desired to construct or improve any portion of such a connecting highway at a width greater than that provided for in the plans and specifications therefor, or if a modification of such plans and specifications is desired by which the cost thereof will be increased, the board of trustees of the village shall proceed as in the preceding section to secure such a modification of the plans and specifications as will provide for such desired construction. The provisions of the preceding section shall apply in like manner to the connecting highway to be constructed or improved as provided in this section.

The provisions of this act shall not prevent the improvement by state aid under the statute as it existed prior to the passage of this act, of streets in cities of the second and third class, where, prior to the passage of this act, highway numbers had been assigned as provided by article six of this act; nor shall the provisions of this act prevent the improvement in such cities of streets heretofore petitioned for and approved in cases where the proposed improvement of each street does not exceed one and one-half miles in length; but the total mileage of all such streets not exceeding one and one-half miles in length shall not in the aggregate exceed four miles.

Wherever plans for such improvement in a city of the second class have been approved and a highway number assigned, and the work is ready for contract as hereinbefore described and the common council of such city has appropriated and made available the city's share of the cost of such improvement, the city treasurer of such city is hereby authorized and empowered to borrow a sufficient amount in anticipation of the collection thereof, and to pledge the faith and credit of the city for the payment of such amount when due, with interest, and is further authorized, empowered and directed to deposit such moneys with the state comptroller in the same manner as is provided by this section with regard to the improvement of village streets. (*Amended by L. 1911, ch. 88, L. 1912, ch. 88, and L. 1916, ch. 570, in effect May 15, 1916.*)

§ 138-a. State and county highways of additional width and increased cost at expense of town.—Whenever the commission shall have determined upon the construction or improvement of a state or county highway or section thereof and it is desired by any town in which such proposed highway is situated to construct or improve the same at a greater width or in a manner involving greater cost, or both, than that provided in the plans and specifications as prepared by the commission, the town board may petition the commission for an estimate of the additional cost of constructing or improving the same to a width or in a manner, or both, as desired

by such board. The commission shall as soon as practicable make an estimate of such additional cost and transmit the same to the town board, and the town board may thereupon by resolution petition the commission to provide the width and type of construction desired. The additional expense caused by the increased width or different type of construction, or both, shall be borne wholly by the town. The commission shall, in its discretion, upon receipt of such resolution, if filed prior to the advertisement for bids, provide for the width and type of construction described in such resolution. Whenever the commission shall have approved such a resolution the plans, specifications and estimate of cost shall be submitted to the town board, who, if it approve such plans, specifications and estimate of cost shall, by resolution, duly adopted by a vote of a majority of all the members of such board, appropriate the funds necessary to provide for the portion of the cost of construction to be borne by the town. Such funds shall, prior to the award of the contract, be deposited by the town with the state comptroller, subject to the draft or requisition of the state commission of highways, and a certified copy of the resolution shall be filed with the commission. If the town board adopts a proposition to raise such funds by the issue and sale of town bonds the bonds may be issued and sold in the manner prescribed in section one hundred and forty-two of this chapter. Upon the completion of the highway within a town where a portion of the cost is borne by the town the commission shall transmit to the town board a statement showing the actual cost of the additional width or changed construction including a proportionate charge for engineering and shall notify the town clerk that it will accept the work within twenty days from the date of such notice unless protest in writing against the acceptance shall be filed by such clerk with the commission. In case a protest is filed the commission shall hear the same and if it is sustained the commission shall delay the acceptance of the highway or section thereof until the same be properly completed. If no protest is filed the highway or section thereof shall at the expiration of the said twenty days be deemed finally completed and accepted on behalf of the town and the state and shall thereafter be maintained in the manner provided in this chapter for maintenance and repair of state and county highways. (*Added by L. 1911, ch. 375, and amended by L. 1916, ch. 461, in effect May 9, 1916.*)

§ 141-a. **Alternative method of apportioning the expense of county highways.**—The board of supervisors of any county may in its discretion provide by resolution that the cost of construction or improvement of any county highway within the county shall be apportioned as follows: Fifty per centum of the total cost thereof shall be a county charge in the first instance and the same shall be paid upon the requisition or draft of the state commission of highways by the county treasurer of the county within which such highway or portion thereof is located, and the amount so paid shall be apportioned by the board of supervisors so that at least thirty-five per

centum of the total cost of construction shall be a general county charge and not more than fifteen per centum shall be a charge upon the town or towns within which the improved road is located. The portion of the cost of construction to be paid by the town or towns wherein such improved road is located shall be determined as follows: If such road is located in the total assessed valuation of taxable property in such town as equalized equalized for state purposes, such town shall pay fifteen per centum of such cost; if such road is located in any other town, such town shall pay such proportion of fifteen per centum of the total cost of construction as the total assessed valuation of taxable property in such town as equalized for state purposes is to the total of such valuation in the town in such county having the highest assessed valuation as above described. The difference of all amounts to be paid less than fifteen per centum of the total cost of such road shall be apportioned to be a county charge in excess of such thirty-five per centum of the cost of such improved road as above provided. The portion of the cost to be borne by the county and by the town or towns shall be appropriated and made immediately available to the requisition or draft of the state commission of highways at the time of the final resolution by the board of supervisors approving the plans and estimate of cost submitted by the state commission of highways as provided by section one hundred and twenty-eight of this act.

In the case of a county highway where the plans have heretofore been approved by the board of supervisors of a county, and the distribution of cost for such highway has been made as provided by section one hundred and forty-one of this act, and the county has heretofore appropriated and made available its share of the cost of the construction or improvement of such highway based upon an apportionment other than that provided by this section, but the final payment has not been made by the county, the board of supervisors may in accordance with the provisions of section one hundred and twenty-eight of this act rescind the resolution previously adopted appropriating its share of the cost, and in such case, shall adopt a resolution appropriating such an amount as will equal fifty per centum of the total estimated cost of such highway as shown in an estimate to be provided by the state commission of highways, making such amount so appropriated immediately available to the draft or requisition of the commission for the construction or improvement of such highway, and shall apportion such amount between the county and the town or towns in the manner hereinbefore provided.

If there be not sufficient funds in the county treasury to pay the share of the county and of the town or towns, the county treasurer is hereby authorized and empowered to borrow, in anticipation of taxes to be collected therefor or of the issuance of bonds as hereby provided, such an amount as may be necessary, and is hereby authorized to pledge the faith and credit of the county for the payment, with interest, of the moneys so borrowed.

The board of supervisors of the county may by resolution authorize the

§ 142a.

Street surface railroad on highway.

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issuance of county highway bonds, in amounts to be determined by such board, the proceeds of which shall be applied to the payment of the share of the cost of construction or improvement of such highway to be borne by the county and the town or towns apportioned as hereinbefore provided. Such bonds shall be payable not more than thirty years from their date. The payment of such bonds and the interest thereon, as the same mature from time to time, shall be apportioned to the county at large and to the town or towns in which such highway is constructed in such manner that the same shall be borne in accordance with the apportionment of the cost hereinbefore provided.

The board of supervisors shall provide for the assessment, levy and collection by tax, apportioned between the county at large and the town or towns in which such highway is constructed, according to such apportionment as hereinbefore provided, of the moneys required to meet the obligation of the county and of the town or towns for their respective share of the cost of such improved highway; and the moneys so raised shall be paid into the county treasury and shall become available for the draft or requisition of the state commission of highways, or for the payment of moneys borrowed by the county treasurer as hereinbefore provided together with interest thereon, or for the payment of bonds and the interest thereon issued as hereinbefore provided, or any part thereof. (*Added by L. 1916, ch. 179, in effect Apr. 11, 1916.*)

§ 142-a. **Street surface railroad on highway.**—Where a street surface railroad shall be laid in any street, highway or public place in any town, village, or in any city of the second or third classes, which it was heretofore or shall hereafter be determined to pave, improve, reconstruct or repair, as provided in this chapter, the proposals and contract for such improvement, reconstruction or repair shall include the improvement, reconstruction or repair of the space between the tracks of such street surface railroad, the rails of such tracks and two feet in width outside of such tracks, and the work of improvement, reconstruction or repair in such space shall be done at the same time and under the same supervision as the work of improvement, reconstruction or repair of the remainder of such street, highway or public place. The commission may prescribe the materials to be used in paving, improving, reconstructing or repairing such street, highway or public place within the railroad space above described, and upon the proper completion of the work, the commission shall certify to the board of trustees of such village, or the common council of cities of the second or third classes, as the case may be, the cost of the pavement, improvement, reconstruction or repair of such street, highway or public place within such railroad space, and the entire expense of the pavement, reconstruction or repair within such railroad space whether heretofore or hereafter made or ordered, shall be assessed and levied upon the property of the company owning or operating such railroad, and shall be collected in the

L. 1916, ch. 578.

Maintenance and repair.

§§ 149a, 160, 170.

same manner as other expenses for local improvements are assessed, levied and collected in such town, village or city; and an action may also be maintained by the municipality against the company in any court of record for the collection of such expense and assessment. This section shall not apply to such pavement, reconstruction or repairs in villages in counties adjoining cities of the first class. (*Added by L. 1913, ch. 177, and amended by L. 1916, ch. 578, in effect May 17, 1916.*)

§ 149-a. **Purchase of land in certain counties.**—The board of supervisors in a county adjoining a city of the first class containing over two million inhabitants may, by resolution, authorize the purchase of lands to be acquired for the purpose specified in section one hundred and forty-eight of this chapter. The purchase price of such lands, however, shall not exceed the sum of five thousand dollars; it shall be a county charge and shall be paid in the same manner as other county charges are paid. (*Added by L. 1916, ch. 12, in effect Feb. 21, 1916.*)

§ 160. **Maintenance of detours during construction.**—The maintenance and repair of any highway or right of way designated by the commission for use as a detour, during the construction, reconstruction or repair of a state or county highway, shall be under the supervision of the commission and shall be paid for out of the construction fund, in cases of construction or improvement contracts, or the state's share of the money available for maintenance and repair of improved roads in such county in cases of reconstruction or repair contracts. Such highway or right of way designated as a detour by the commission shall be deemed as an improved highway during construction, reconstruction or repair. (*Added by L. 1912, ch. 83, and amended by L. 1916, ch. 578, in effect May 17, 1916.*)

§ 170. **Commission to provide for maintenance and repair.**—The maintenance and repair of improved state and county highways in towns and incorporated villages, exclusive, however, of the cost of maintaining and repairing bridges having a span of five feet or over, shall be under the direct supervision and control of the commissioner of highways and he shall be responsible therefor. Such maintenance and repair may be done in the discretion of the commissioner either directly by the department of highways or by contract awarded to the lowest responsible bidder at a public letting after due advertisement, and under such rules and regulations as the commissioner of highways may prescribe. The commissioner of highways shall also have the power to adopt such system as may seem expedient so that each section of such highways shall be under constant observation and be effectively and economically preserved, maintained and repaired. The commissioner of highways shall have the power to purchase materials for such maintenance and repairs, except where such work is done by contract, and contract for the delivery thereof at convenient intervals along such highways. (*Amended by L. 1911, ch. 646, L. 1912, ch. 83, L. 1913, ch. 80, and L. 1916, ch. 578, in effect May 17, 1916.*)

§§ 171, 172.

Maintenance; cost to towns.

L. 1916, ch. 578.

§ 171. Appropriations by state; apportionment of moneys.—There shall be annually appropriated for the maintenance and repair of improved state and county highways an amount sufficient to provide therefor, based upon the estimates prepared and submitted by the commission to the legislature as provided in section twenty-three of this chapter. Not less than ninety per centum of the amount so appropriated shall be apportioned by the commission each year among the counties in accordance with the proportion which the amount to be apportioned bears to the total amount of such estimates. The comptroller, upon the requisition of the commission, shall draw his warrant upon the state treasurer in favor of the county treasurer of the county in which the improved state or county highways are located, for an amount which shall not be in excess of the total amount apportioned by the commission to such county. The moneys so paid shall be deposited by the county treasurer to the credit of the fund for the maintenance of improved state and county highways in the county. Any moneys so deposited and placed to the credit of the fund for such maintenance shall be available and subject to the order of the state highway commission at any time prior to the total expenditure thereof. Not more than ten per centum of the amount so appropriated each year may be reserved by the commission for the repair or rebuilding of improved state or county highways, which ten per centum shall not be deemed to be available until after the moneys paid the county treasurer of a county as heretofore provided shall have been expended, and which shall be paid by the state treasurer upon the warrant of the comptroller drawn upon the requisition of the commission issued when required for such purposes. (*Amended by L. 1912, ch. 83, and L. 1916, ch. 578, in effect May 17, 1916.*)

§ 172. Cost to town for maintenance of state and county highways.—Each town shall pay for the maintenance and repair of state and county highways each year the sum of fifty dollars for each mile or major fraction of a mile of the total mileage of state and county highways within the town, each incorporated village shall pay for such maintenance and repair at the rate of one and one-half cents for each square yard of surface of such improved highway maintained by the state within its corporate limits. On or before the first day of November in each year the commission shall transmit to the clerk of the board of supervisors of each county and to the board of trustees of each village a statement specifying the number of miles of improved state and county highways in each town, the number of square yards of surface of such improved highway as hereinbefore provided in each village in such county and the amount which each of such towns and villages is required to pay into the county treasury on account of the maintenance of state and county highways and a copy of such statements shall be forwarded to the county treasurer. The board of supervisors of the county and the board of trustees of an incorporated village shall cause the amount to be paid by each town and incorporated village of the county,

L. 1916, ch. 578.

Maintenance fund.

§§ 172a, 173.

to be assessed, levied and collected therein in the same manner as other town and village charges, in the several towns and villages and such amount when collected shall be paid into the county treasury to the credit of the fund for the maintenance of state and county highways in the several towns and incorporated villages of the county. (*Amended by L. 1912, ch. 83, L. 1915, ch. 551, and L. 1916, ch. 578, in effect May 17, 1916.*)

Levy of tax; duty of supervisors.—Upon the receipt of the notice of the state commissioner of highways transmitted pursuant to this section of the Highway Law a mandatory statutory duty, ministerial in character, devolves upon the board of supervisors, and under this duty the board is required to take such action as shall result in the levying of a tax by the towns to raise their respective proportion of the fund applicable to the maintenance of such highways. This duty is not dependent upon the acceptance of the highways by the proper officials. People *ex rel. Carlisle v. Board of Supervisors* (1916), 217 N. Y. 424, affg. 164 App. Div. 922.

§ 172-a. Saving clause; temporary provisions.—Whenever any city has deposited certain moneys with a county treasurer for the maintenance of streets within such city in accordance with the provisions of section one hundred and seventy-two of this chapter as it existed prior to April first, nineteen hundred and sixteen, and there remains an unexpended balance of such moneys in the hands of the county treasurer, such unexpended balance shall, when such section as hereby amended takes effect, revert to such city and the county treasurer is hereby authorized, empowered and directed to return such unexpended balance to the treasurer of such city. The moneys returned by a county treasurer to a city in accordance with the provisions of this section shall be expended by the city in the maintenance and repair of the streets within such city which have been constructed or improved by state aid. (*Added by L. 1916, ch. 578, in effect May 17, 1916.*)

§ 173. Disbursement of maintenance funds.—The amount apportioned by the commission for the maintenance and repair of state and county highways in each county shall be expended for the repair and maintenance of such highways in such county, but the amount paid by each town, or incorporated village, as provided by section one hundred and seventy-two shall be expended for the repair and maintenance of such highways in such town or incorporated village. The county treasurer shall pay out the moneys received by him as provided in this article upon the written order of the representative of the commission, who, before drawing any such orders shall give a bond in an amount to be specified by the commission, and with such sureties as shall be approved by the commission; such bond shall be filed in the office of the state comptroller and certified copy thereof filed in the office of the state highway commission and in the office of the county treasurer. Such orders shall be issued upon vouchers duly presented to the representative of the commission in the form to be prescribed by it. The commission may adopt rules and regulations providing for the presentation and payment of accounts for maintenance and repair. (*Amended by L. 1912, ch. 83, and L. 1916, ch. 578, in effect May 17, 1916.*)

§§ 174, 176-178.

Liability of state for damages.

L. 1916, ch. 578.

§ 174. **Reports of county treasurer.**—The county treasurer shall report to the commission annually and at such other times as required by the commission, the amount received by him on account of the maintenance and repair of improved state and county highways in the several towns and incorporated villages in his county and the expenditures made by him out of such moneys. The form and contents of such report shall be prescribed by the commission. (*Amended by L. 1912, ch. 83, and L. 1916, ch. 578, in effect May 17, 1916.*)

§ 176. **Liability of state for damages.**—The state shall not be liable for damages suffered by any person from defects in state and county highways, except such highways as are maintained by the state by the patrol system, but the liability for such damages shall otherwise remain as now provided by law, notwithstanding the construction or improvement and maintenance of such highways by the state under this chapter; but nothing herein contained shall be construed to impose on the state any liability for defects in bridges over which the state has no control. Within the limits of incorporated villages the state shall maintain a width of pavement equal to the width of pavement constructed or improved at the expense of the state, if a state highway, or of the state and county, if a county highway, the location of the state's portion of such roadway within said incorporated limits to be determined by the center line of the roadway as shown on the plans on file with the state highway department, and the state shall be liable for damages to persons or property only when such damages shall occur as a result of the defective condition of the portion of improved highway as above described. (*Amended by L. 1910, ch. 570, L. 1912, ch. 83, and L. 1916, ch. 578, in effect May 17, 1916.*)

§ 177. **Additional width or different type of construction under repair contracts.**—Whenever in the maintenance and repair of state and county highways the commission shall have determined upon the necessity of resurfacing such highway, the town or village wherein the highway is located may petition the commission to provide an additional width or a different type of pavement, or both, in the plans providing for such resurfacing. The additional expense of such widening or different type of construction shall be borne wholly by such town or village and the provisions of sections one hundred and thirty-seven and one hundred and thirty-eight-a shall apply to such additional width or different type of construction under such repair contract in the same manner as under a construction contract as provided in those sections. (*Added by L. 1916, ch. 578, in effect May 17, 1916.*)

§ 178. **State to share expense of maintaining county roads.**—*Amended by L. 1910, chs. 165, 567, L. 1911, ch. 362, and repealed by L. 1916, ch. 459, in effect Oct. 1, 1916.*

§ 234. Highway abandoned.

Certiorari; review of action of town superintendent in filing certificate of abandonment.—The action of a town superintendent of highways in filing a certificate of qualified abandonment of a town highway does not finally determine the rights of the parties and is not, therefore, reviewable by certiorari. Where a petition alleges that a filing in the town clerk's office by the superintendent of highways of a certificate of qualified abandonment of a highway pursuant to section 234 of the Highway Law is colorable only and part of a wrongful and fraudulent scheme to permanently abandon the road and deprive petitioner and the public of its benefit, relator will be granted an alternative writ of mandamus requiring the superintendent of highways to cancel such certificate and put the highway in a suitable condition for travel. *Matter of Marvin* (1915), 91 Misc. 287, 155 N. Y. Supp. 28.

If a highway remains closed for six years with the acquiescence of the public, there is an extinguishment of the public right, but obstructions of a highway across part of its width only, narrowing but not closing the line of travel, are not sufficient, however long continued, to put an end to its existence. To have that effect the obstruction must cover the entire width; it is not, however, necessary to show an abandonment along the entire length. These rules have no application where the fee is vested in the public. *Barnes v. Midland R. R. Terminal Co.* (1916), 218 N. Y. 91, revg. 161 App. Div. 621.

§ 250. Bridges; when town or county expense.

Apportionment of expense of constructing bridge between counties to replace old structures.—When the bridge which formerly extended from the city of Glens Falls, county of Warren, to an island in the Hudson river and the bridge extending from said island to the village of South Glens Falls in the adjoining county of Saratoga, were replaced by a structure extending from said city to said village situated in the said adjoining counties, the city of Glens Falls and the town of Moreau are jointly liable for the expense of constructing the new bridge, and of a bridge temporarily used, while the county of Warren is liable for not less than one-sixth part of the expense of construction, care, maintenance and repaid of the new bridge. The county of Warren is not exempt from sharing in the cost of the southerly portion of said bridge extending from the island in the Hudson river to said village in the adjoining county. *People ex rel. City of Glens Falls v. County of Warren* (1915), 170 App. Div. 144, 155 N. Y. Supp. 642.

§ 270. Licenses; ferries.

Repeal by implication.—The exclusive right conferred by section 83 of the Greater New York Charter upon the city to establish and permit the operation of all ferries using any part of its water front impliedly repeals, so far as concerns the territorial water rights of the city, the provision of this section of the Highway Law which empowers county and city courts to grant licenses for "keeping ferries" in the respective counties and cities for five-year terms. *City of New York v. New Jersey and Staten Island Ferry Co.* (1915), 92 Misc. 40, 155 N. Y. Supp. 937.

§ 280. Application of motor vehicle article.

The object and purpose of the statute is to promote the safety of those traveling the public highways. While a motor vehicle is not, in and of itself, to be deemed a dangerous machine, nevertheless it becomes such in the hand of a careless and inexperienced person. The statute has, in effect, so declared when it forbids its operation by persons under the age of eighteen. It, in substance, declares that such persons do not possess the requisite care and judgment to run motor vehicles on the public highways without endangering the lives and limbs of others. While the relation of parent and child does not render the parent liable

§§ 282, 284. Registration of auto trucks and omnibuses. L. 1916, ch. 598.

for the torts of the child, nevertheless a parent may become liable for an injury caused by the child. *Schultz v. Morrison* (1915), 91 Misc. 248, 154 N. Y. Supp. 257.

§ 282. Registration of motor vehicles.—*Subd. 6-a, added by L. 1916, ch. 598, in effect May 19, 1916, as follows:*

6-a. Registration fees for auto trucks and omnibuses.—The commissioner of highways, the superintendent of public works and the state engineer and surveyor shall, on or before January first, nineteen hundred and seventeen, adopt and file in the office of the secretary of state a schedule of registration fees to be paid upon the registration or reregistration, in accordance with the provisions of this article, of motor vehicles used as omnibuses for the transportation of passengers and of motor vehicles, commonly known as auto trucks, used for the transportation of goods, wares and merchandise; and in fixing such fees shall classify such motor vehicles upon the basis of the time and extent of their use of the public highways and the relative wear and tear of the public highways by reason of their use thereon. The secretary of state shall cause such schedule to be printed and copies thereof distributed upon application. The fees prescribed by such schedule shall take effect February first, nineteen hundred and seventeen, and shall, as to the motor vehicles included in such schedule, supersede the provisions of subdivision six of this section as to the amount of registration fees therefor. (*Section added by L. 1910, ch. 374, and amended by L. 1911, ch. 491, L. 1915, ch. 348, and subd. 6-a added by L. 1916, ch. 598, in effect May 19, 1916.*)

A dealer may loan his plates only to purchasers of his machine, and then only under the restrictions in subdivision 9 of this section. *Atty. Genl. Opin., 4 State Dep. Rep. 527 (1915).*

Liability of father for negligence of sixteen year old son.—Where, in an action for personal injuries received by plaintiff in a collision between a vehicle driven by him and an automobile owned by defendant but operated at the time of the accident by his sixteen-year-old son, it appeared that defendant granted his son's request for leave to take the machine down town to make a purchase, that on the way he picked up several of his school companions and on the way home ran into the rear of plaintiff's wagon, throwing him from his seat and severely injuring him, and the evidence shows a clear case of negligence on the part of the son, a verdict in favor of plaintiff will not be disturbed. *Schultz v. Morrison* (1915), 91 Misc. 248, 154 N. Y. Supp. 257.

§ 284. Registration by manufacturers and dealers.

The phrase "nothing in this subdivision shall be construed to apply to a motor vehicle operated for private use or for hire" means that when the preferred classes of manufacturers and dealers do operate for private use or for hire, they must comply with the additional requirements for ordinary owners' registration, and for which regular fees are charged. *Atty. Genl. Opin., 4 State Dep. Rep. 527 (1915).*

The use of dealer's plates in the operation by a dealer or his agents of his automobiles for private use or for hire is prohibited. *Atty. Genl. Opin., 4 State Dep. Rep. 527 (1915).*

The retirement of a member of a partnership holding a dealer's registration

L. 1916, ch. 579.

Local ordinances prohibited.

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plate, does not require a transfer of the registration or the issuance of a new one during the term of the original. Atty. Genl. Opin., 4 State Dep. Rep. 527 (1915).

§ 288. **Local ordinances prohibited.**—Except as herein otherwise provided, local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation requiring from any owner or chauffeur to whom this article is applicable any tax, fee, license or permit for the use of the public highways, or excluding any such owner or chauffeur from the free use of such public highways, excepting such driveway, speedway or road as has been or may be expressly set apart by law for the exclusive use of horses and light carriages or in any other way respecting motor vehicles or their speed upon or use of the public highways; and no ordinance, rule or regulation contrary to or in any wise inconsistent with the provisions of this article, now in force or hereafter enacted, shall have any effect; provided, however, that the power given to local authorities to regulate vehicles offered to the public for hire, and processions, assemblages or parades in the streets or public places, and all ordinances, rules and regulations which may have been or which may be enacted in pursuance of such powers shall remain in full force and effect; and provided, further, that local authorities may set aside for a given time a specified public highway for speed contests or races to be conducted under proper restrictions for the safety of the public; and provided, further, that local authorities may exclude motor vehicles from any cemetery or grounds used for the burial of the dead, and may by general rule, ordinance or regulation exclude motor vehicles used solely for commercial purposes from any park or part of a park system where such general rules, ordinance or regulation is applicable equally and generally to all other vehicles used for the same purposes, and provided further that nothing in this article contained shall impair the validity or effect of any ordinances, regulating the speed of motor vehicles, or of any traffic regulations with regard to the operation of motor vehicles, heretofore or hereafter made, adopted or prescribed pursuant to law in any city of the first class or in any city of the second class in a county adjoining a city of the first class; provided, further, that the local authorities of other cities and incorporated villages may limit by ordinance, rule or regulation the speed of motor vehicles on the public highways, such speed limitation not to be in any case less than one mile in four minutes, and the maintenance of a greater rate of speed for one-eighth of a mile shall be presumptive evidence of driving at a rate of speed which is not careful and prudent, and on further condition that each city or village shall have placed conspicuously on each main public highway where the city or village line crosses the same and on every main highway where the rate of speed changes, signs of sufficient size to be easily readable by a person using the highway, bearing the words, "City of " or "Incorporated village of , " "Slow down to miles" (the rate being inserted), and also an arrow pointing in the direction where the speed is to be reduced or changed, and also on further condition that such

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ordinance, rule or regulation shall fix the punishment for violation thereof, which punishment shall, during the existence of the ordinance, rule or regulation, supersede those specified in subdivision two of section two hundred and ninety of this chapter but, except in cities of the first or second class shall not exceed the same. Official copies of all local ordinances passed under the provisions of this section shall be filed with the secretary of state at least thirty days before they shall respectively take effect and a brief summary of all such local ordinances shall be printed in pamphlet form and issued at regular intervals by the secretary of state. (*Added by L. 1910, ch. 374, and amended by L. 1915, ch. 487, and L. 1916, ch. 579, in effect May 17, 1916.*)

§ 290. Punishment for violation; procedure.

It is essential to a conviction under an indictment for violation of subdivision 3 of this section that the jury should be satisfied beyond a reasonable doubt not only that an injury had been caused to person or property, but that the defendant knew that such injury had been caused, and notwithstanding such knowledge left the scene of the accident without giving his name, address or license number, and that he neglected subsequently to report the injury to the nearest police station or judicial officer as the law requires. *People v. Curtis* (1916) 217 N. Y. 304, revg. 169 App. Div. 935.

Evidence.—Upon the trial of an indictment for a violation of this section of the law, evidence may properly be given showing how much a person was injured in an automobile collision as bearing upon the seriousness of the accident and tending to show that it ought not to have escaped the notice and attention of the defendant. The subsequent suffering of the injured person, however, and testimony as to the length of time he was compelled to remain in the hospital and the details of the medical or surgical treatment which he received should not be admitted. Error was committed in receiving testimony to the effect that a witness saw an automobile running through a street in the city where the accident occurred about twelve o'clock on that night at a speed of forty or fifty miles an hour, where the witness did not identify the car nor state any fact which warranted the inference that it was the automobile of the defendant. *People v. Curtis* (1916), 217 N. Y. 304, revg. 168 App. Div. 935.

§ 291. Disposition of registration fees; fines and penalties.—1. On the first day of each month or within ten days thereafter all fines, penalties or forfeitures collected for violations of any of the provisions of this article or of any act in relation to the use of the public highways by motor vehicles now in force or hereafter enacted, under the sentence or judgment of any court, judge, magistrate or other judicial officer having jurisdiction in the premises, shall be paid over by such court, judge, magistrate or other judicial officer to the treasurer of the state, with a statement accompanying the same, setting forth the action or proceeding in which such moneys were collected, the name and residence of the defendant, the nature of the offense, and the fine, penalty, sentence or judgment imposed. On the first day of each month or within ten days thereafter, every judge, magistrate or clerk of a court having jurisdiction of the violation of any of the provisions of this article, shall make and forward to the treasurer of the state,

a verified report of all criminal actions or proceedings instituted or tried before him or it during the preceding calendar month for violation of any of the provisions of this article, which report shall set forth the name and address of the defendants, the nature of the offenses and the fines and penalties collected or imposed by such court, judge, magistrate or judicial officer, which report shall be open to inspection during reasonable business hours to any citizen of the state. On or before the first day of February of each year, the treasurer shall transmit to each branch of the legislature a statement showing the amount of the receipts under this article during the preceding fiscal year paid into the state treasury.

2. The secretary of state shall deposit all registration fees collected by him under this article in a responsible bank, banking house or trust company in the city of Albany, which shall pay the highest rate of interest to the state for such deposit, to the credit of the secretary of state on account of the motor vehicle law. Every such bank, banking house or trust company shall execute and file in his office an undertaking to the state, in the sum, and with such sureties, as are required and approved by the secretary of state and comptroller for the safe keeping and prompt payment on legal demand therefor of all such moneys held by or on deposit in such bank, banking house or trust company, with interest thereon on daily balances at such rate as the secretary of state and comptroller may fix. Every such undertaking shall have endorsed thereon or annexed thereto the approval of the attorney-general as to its form. The secretary of state shall on the first day of each month make a verified return to the state treasurer of all registration fees received by him under this article during the preceding calendar month, stating from what county received and by whom and when paid.

3. The secretary of state shall on or before the tenth day of each month pay to the state treasurer fifty per centum of the balance to his credit in such bank, banking house or trust company, on account of registration fees collected under this article, at the close of business on the last day of the preceding month, and from the money so deposited shall pay to the treasurer of each county fifty per centum of the registration fees collected from residents of such county during the preceding calendar month. In the city of New York such payment shall be made through the chamberlain of such city on account of all counties included therein.

4. All moneys paid into the state treasury pursuant to this article shall be appropriated and used for the maintenance and repair of the improved roads of the state, under the direction of the state commissioner of highways. All money received by the chamberlain of the city of New York, pursuant to this article, shall be paid into the treasury of the city to the credit of the general fund. All moneys received by the county treasurer of any county pursuant to this article, shall be used for the permanent construction or improvement of town highways only in such county as defined by subdivision four of section three of this chapter. The county

treasurer shall, upon receipt of such moneys, keep an accurate record thereof, and shall furnish the board of supervisors of the county, upon request by it, with a certified statement of such receipts. The board of supervisors of the county shall, at a regular or special meeting and by a majority vote, allot such moneys to one or more of the towns within such county, and shall by resolution appropriate for the use of such town or towns the moneys so allotted. A certified copy of such resolution shall be filed with the county treasurer of such county, whereupon such county treasurer shall pay to the supervisor of such town or towns the amount to which each is entitled as determined and indicated by such resolution. Before receiving any such moneys the supervisor shall give a bond in accordance with the provisions of section one hundred and four of this chapter. The places and the manner in which such moneys shall be expended shall be determined by the town board and the town superintendent subject to the approval of the state commission of highways in accordance with the provisions of section one hundred and five of this chapter, which shall also govern the method by which such moneys shall be expended. A statement of the receipts and expenditures of such moneys shall be included in the report required by section one hundred and seven of this chapter. The provisions of section one hundred and eight of this chapter shall apply as to the method of keeping accounts, the forms, blanks and orders used, and the filing of records in the town clerk's office. (*Added by L. 1910, ch. 374, and amended by L. 1916, ch. 577, in effect May 17, 1916.*)

Construction.—In the provision of subdivision 2 that “all fines, penalties, or forfeitures collected for violations of any of the provisions of this article or of any act in relation to the use of public highways by motor vehicles now in force or hereafter enacted,” the legislature used the word “act” with reference to acts of its own making and not ordinances or regulations made by local authorities, nor even statutes having only a local application. *People v. City of Buffalo* (1916), 93 Misc. 275, 157 N. Y. Supp. 938.

The state is entitled to recover from a municipality the amount of fines and penalties collected by it for violations of the provisions of the Motor Vehicle Law. The state, however, is not entitled to recover the amount of fines and penalties collected by the city of Buffalo for violations of the various ordinances of the city and of its board of park commissioners so far as they regulate the use of motor vehicles within the city, such ordinances being fairly within the exceptions contained in the Motor Vehicle Law and therefore remaining in full force and virtue. *People v. City of Buffalo* (1916), 93 Misc. 275, 157 N. Y. Supp. 938.

ARTICLE XI-A.

(Article added by L. 1916, ch. 72, in effect Apr. 1, 1916.)

MOTOR CYCLES.

Section 300. Application of article.

301. Definitions.

302. Registration of motor cycles; age of operator; fees; renewals.

303. Distinctive number; form of number plates.

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- 304. Exemption of nonresident owners.
- 305. Signaling and other devices; signals; rules of the road.
- 306. Speed permitted.
- 307. Local ordinances prohibited.
- 308. Punishment for violation; procedure.
- 309. Disposition of registration fees; fines and penalties; reports of criminal actions or proceedings.
- 310. Acts repealed.

§ 300. **Application of article.**—Except as herein otherwise expressly provided, this article shall be exclusively controlling:

- 1. Upon the registration, numbering and regulation of motor cycles;
- 2. On their use of the public highways, and
- 3. On the accessories used upon motor cycles and their incidents and the speed of motor cycles upon the public highways;
- 4. On the punishment for the violation of any of the provisions of this article. (*Added by L. 1916, ch. 72, in effect Apr. 1, 1916.*)

§ 301. **Definitions.**—The term “motor cycle” as used in this article, except where otherwise expressly provided, shall include all motor cycles. A motor cycle is a vehicle with two wheels, one following the other, propelled by other than muscular power, or such vehicle with a car attached to the side, front or rear and operated on one or more additional wheels. The term “local authorities” shall include all officers of counties, cities, boroughs, towns or villages, as well as all boards, committees and other public officials of such counties, cities, boroughs, towns or villages. The term “state” as used in this article, except where otherwise expressly provided, shall also include the territories and the federal districts of the United States. The term “owner” shall also include any person, firm, association or corporation renting a motor cycle or having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days. The term “public highway” shall include any highway, county road, state road, public street, avenue, alley, park, parkway or public place in any county, city, borough, town or village, except any speedway which may have been or may be expressly set apart by law for the exclusive use of horses and light carriages. (*Added by L. 1916, ch. 72, in effect Apr. 1, 1916.*)

§ 302. **Registration of motor cycles; age of operator; fees; renewals.**

- 1. **Registration by owners.** Every owner of a motor cycle which shall be operated or driven upon the public highways of this state shall, except as herein otherwise expressly provided, cause to be filed, by mail or otherwise, in the office of the secretary of state a verified application for registration on a blank to be furnished by the secretary of state for that purpose, containing: (a) A brief description of the motor cycle to be registered, including the name of the manufacturer and factory number of such vehicle; (b) the name, age, residence, including county and business address, of the owner of such motor cycle; (c) provided that, if such motor

cycle is used or to be used solely for commercial purposes, the applicant shall so certify.

2. Age of operator. No person shall operate or drive a motor cycle who is under sixteen years of age.

3. Registration book. Upon the receipt of an application for registration of a motor cycle, as provided in this article, the secretary of state shall file such application in his office at Albany and such other places within the state of New York as he may designate and register such motor cycle or motor cycles, with the name, residence and business address of the owner, together with the facts stated in such application, in a book or index to be kept for the purpose, under the distinctive number assigned to such motor cycle by the secretary of state, which book or index shall be open to public inspection during reasonable business hours.

4. Certificate of registration. Upon the filing of such application and the payment of the fee hereinafter provided, the secretary of state shall assign to such motor cycle a distinctive number and, without expense to the applicant, issue and deliver in such manner as the secretary of state may select to the owner a certificate of registration, in such form as the secretary of state may prescribe, and a number plate at a place within the state of New York named by the applicant in his application. In the event of the loss, mutilation or destruction of any certificate of registration or number plate, the owner of a registered motor cycle may obtain from the secretary of state a duplicate thereof upon filing in the office of the secretary of state an affidavit showing such fact and the payment of a fee of fifty cents.

5. Times for registration and re-registration. Registration applied for on or before April first, nineteen hundred and sixteen, shall take effect on that date and certificates issued on such application or under any application made prior to January thirty-first, nineteen hundred and seventeen, shall expire on the latter date. Registration thereafter shall be renewed annually in the same manner and upon payment of the same annual fee as provided in this section for registration, to take effect on the first day of February, in each year beginning with such date in the year nineteen hundred and seventeen; and the certificates of registration issued thereunder or issued between any such dates shall expire on the succeeding thirty-first day of January.

6. Registration fees. The following fees shall be paid to the secretary of state upon the registration or re-registration of a motor cycle in accordance with the provisions of this article: Two dollars and fifty cents upon the registration of any motor cycle of whatever horse-power, provided that if a motor cycle is originally registered after August first in any year, the register fee for that year shall be one-half of the fee herein provided for. The provisions hereof with respect to the payment of registration fees shall not apply to motor cycles owned or controlled by the state, a city or county or any of the departments thereof, but in other respects shall be applicable.

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7. Fees in lieu of taxes. The registration fees imposed by this article upon motor cycles shall be in lieu of all taxes, general or local, to which motor cycles may be subject.

8. Sale and registration by vendee. Upon the sale or transfer of a motor cycle registered in accordance with this section, the vendor shall immediately give notice thereof with the name and residence of the vendee to the secretary of state, and the vendee shall, within ten days after the date of such sale or transfer, notify the secretary of state thereof upon a blank furnished promptly by him for that purpose, stating the name and business address of the previous owner, if known, the number under which such motor cycle is registered and the name, residence, including county and business address, of the vendee. Upon filing such statement duly verified such vendee shall pay to the secretary of state a fee of one dollar, and upon receipt of such statement and fee the secretary of state shall file such statement in his office and note upon the registration book or index such change in ownership. (*Added by L. 1916, ch. 72, in effect Apr. 1, 1916.*)

§ 303. Distinctive number; form of number plates.—1. Distinctive number must be carried on motor cycles. No person shall operate or drive a motor cycle on the public highways of this state after the first day of April, nineteen hundred and sixteen, unless such motor cycle shall have a distinctive number assigned to it by the secretary of state and a number plate issued by the secretary of state with a number corresponding to that of the certificate of registration conspicuously displayed on the rear of such motor cycle, securely fastened so as to prevent the same from swinging.

2. Number plates to be changed annually. Such number plates shall be of a distinctly different color each year, and there shall be at all times a marked contrast between the color of the number plates and that of the numerals or letters thereon.

3. Form of number plate. Such number plates shall be of metal, on which there shall be the initials "N. Y.," and there shall be the distinctive number assigned to the motor cycle. The size and shape of number plates and size of letters and numerals thereon shall be determined by the secretary of state. No motor cycle shall display the number plates of more than one state at a time, nor shall any plate be used other than those issued by the secretary of state. (*Added by L. 1916, ch. 72, in effect Apr. 1, 1916.*)

§ 304. Exemption of nonresident owners.—The provisions of the foregoing sections relating to registration and display of registration numbers shall not apply to a motor cycle owned by a nonresident of this state, other than a foreign corporation doing business in this state, provided that the owner thereof shall have complied with the provisions of the law of the foreign country, state, territory or federal district of his residence relative to registration of motor cycles and the display of registration numbers thereon, and shall conspicuously display his registration numbers as required thereby. The provisions of this section, however, shall be operative

as to a motor cycle owned by a nonresident of this state only to the extent that under the laws of the foreign country, state, territory or federal district of his residence like exemptions and privileges are granted to motor cycles duly registered under the laws of and owned by residents of this state. (*Added by L. 1916, ch. 72, in effect Apr. 1, 1916.*)

§ 305. **Signaling and other devices; signals; rules of the road.—1.** Brakes, horns and lamps, signaling at crossings. Every motor cycle, operated or driven upon the public highways of this state, shall be provided with adequate brakes in good working order and sufficient to control such motor cycle at all times when the same is in use, and a suitable and adequate bell, horn or other device for signaling, and shall, during the period from one-half hour after sunset to one-half hour before sunrise, display one lighted lamp on the front and one on the rear, or, when such motor cycle is operated with a passenger or other truck attached to the side or front, two such lamps on the front and one on the rear; and in all cases the lamps on a motor cycle shall include a red light visible from the rear. The rays of such rear lamp shall shine upon the number plate carried on the rear of such motor cycle in such manner as to render the numerals thereon visible for at least fifty feet in the direction from which the motor cycle is proceeding. The light of the front lamp or lamps shall be visible at least two hundred feet in the direction in which the motor cycle is proceeding. Every person operating or driving a motor cycle on the public highways of this state shall also, when approaching a cross road outside the limits of a city or incorporated village, slow down the speed of the same and shall sound his bell, horn or other device for signaling in such a manner as to give notice and warning of his approach.

2. Stopping on signal, and other regulations. A person operating or driving a motor cycle shall, on signal by raising the hand, from a person riding, leading or driving a horse or horses or other draft animal, bring such motor cycle immediately to a stop, and, if traveling in the opposite direction, remain stationary so long as may be reasonable to allow such horse or animal to pass, and, if traveling in the same direction, use reasonable caution in thereafter passing such horse or animal; provided that, in case such horse or animal appears badly frightened or the person operating such motor cycle is so signaled to do, such person shall cause the motor of such vehicle to cease running so long as shall be reasonably necessary to prevent accident and insure the safety of others. In approaching or passing a car of a street railway which has been stopped to allow passengers to alight or embark, the operator of every motor cycle shall slow down and if it be necessary for the safety of the public he shall bring said motor cycle to a full stop. Upon approaching a pedestrian who is upon the traveled part of any highway and not upon a sidewalk, and upon approaching an intersecting highway or a curve or a corner in a highway where the operator's view is obstructed, every person operating a motor cycle shall

slow down and give a timely signal with his bell, horn or other device for signaling.

3. Rules of the road. Whenever a person operating a motor cycle shall meet on a public highway any other person riding or driving a horse or horses or other draft animals or any other vehicle, the person so operating such motor cycle shall seasonably turn the same to the right of the center of such highway so as to pass without interference. Any such person so operating a motor cycle shall, on overtaking any such horse, draft animal or other vehicle, pass on the left side thereof, and the rider or driver of such horse, draft animal or other vehicle shall, as soon as practicable, turn to the right so as to allow free passage on the left. Any such person so operating a motor cycle shall, at the intersection of public highways, keep to the right of the intersection of the centers of such highways when turning to the right and pass to the right of such intersection when turning to the left. (*Added by L. 1916, ch. 72, in effect Apr. 1, 1916.*)

§ 306. Speed permitted.—Every person operating a motor cycle on the public highways of this state shall drive the same in a careful and prudent manner and at a rate of speed so as not to endanger the property of another or the life or limb of any person; provided, that a rate of speed in excess of thirty miles an hour for a distance of one-fourth of a mile shall be presumptive evidence of driving at a rate of speed which is not careful and prudent. (*Added by L. 1916, ch. 72, in effect Apr. 1, 1916.*)

§ 307. Local ordinances prohibited.—Except as herein otherwise provided, local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation requiring from any owner to whom this article is applicable any tax, fee, license or permit for the use of the public highways, or excluding any such owner from the free use of such public highways, excepting such driveway, speedway or road as has been or may be expressly set apart by law for the exclusive use of horses and light carriages or in any other way respecting motor cycles or their speed upon or use of the public highways; and no ordinance, rule or regulation contrary to or in anywise inconsistent with the provisions of this article, now in force or hereafter enacted, shall have any effect; provided, however, that the power given to local authorities to regulate vehicles offered to the public for hire, and processions, assemblages or parades in the streets or public places, and all ordinances, rules and regulations which may have been or which may be enacted in pursuance of such powers shall remain in full force and effect; and provided, further, that local authorities may set aside for a given time a specified public highway for speed contests or races, to be conducted under proper restriction for the safety of the public; and provided, further, that local authorities may exclude motor cycles from any cemetery or grounds used for the burial of the dead, and may by general rule, ordinance or regulation exclude motor cycles used solely for commercial purposes from any park or part of a park system where such gen-

eral rule, ordinance or regulation is applicable equally and generally to all other vehicles used for the same purposes, and provided further that nothing in this article contained shall impair the validity or effect of any ordinances, regulating the speed of motor cycles, or of any traffic regulations with regard to the operation of motor cycles, heretofore or hereafter made, adopted or prescribed pursuant to law in any city of the first class or in any city of the second class in a county adjoining a city of the first class; provided, further, that the local authorities of other cities and incorporated villages may limit by ordinance, rule or regulation the speed of motor cycles on the public highways, such speed limitation not to be in any case less than one mile in four minutes, and the maintenance of a greater rate of speed for one-eighth of a mile shall be presumptive evidence of driving at a rate of speed which is not careful and prudent, and on further condition that each city or village shall have placed conspicuously on each main public highway where the city or village line crosses the same and on every main highway where the rate of speed changes, signs of sufficient size to be easily readable by a person using the highways, bearing the words, "City of " or "Incorporated village of , " "Slow down to miles" (the rate being inserted), and also an arrow pointing in the direction where the speed is to be reduced or changed, and also on further condition that such ordinance, rule or regulation shall fix the punishment for violation thereof, which punishment shall, during the existence of the ordinance, rule or regulation, supersede those specified in subdivision two of section three hundred and eight of this chapter but, except in cities of the first class, shall not exceed the same. Official copies of all local ordinances passed under the provisions of this subdivision shall be filed with the secretary of state at least thirty days before they shall respectively take effect and all such local ordinances shall be printed in pamphlet form and issued at regular intervals by the secretary of state. (*Added by L. 1916, ch. 72, in effect Apr. 1, 1916.*)

§ 308. **Punishment for violation; procedure.**—1. The violation of any of the provisions of sections three hundred and two and three hundred and three of this article shall constitute a misdemeanor punishable by a fine not exceeding twenty-five dollars.

2. The violation of any of the provisions of section three hundred and six of this article shall constitute a misdemeanor punishable by a fine of not exceeding twenty-five dollars.

3. Punishment for operating motor cycle while in an intoxicated condition; for going away without stopping after accident and making himself known. Whoever operates a motor cycle while in an intoxicated condition shall be guilty of a misdemeanor. Any person operating a motor cycle who, knowing that injury has been caused to a person or property, due to the culpability of the said operator, or to accident, leaves the place of said injury or accident, without stopping and giving his name, residence,

including street and street number, and operator's license number to the injured party, or to a police officer, or in case no police officer is in the vicinity of the place of said injury or accident, then reporting the same to the nearest police station, or judicial officer, shall be guilty of a felony punishable by a fine of not more than five hundred dollars or by imprisonment for a term not exceeding two years, or by both such fine and imprisonment; and if any person be convicted a second time of either of the foregoing offenses, he shall be guilty of a felony punishable by imprisonment for a term of not less than one year and not more than five years. A conviction of a violation of this subdivision shall be reported forthwith by the trial court or the clerk thereof to the secretary of state, who shall upon recommendation of the trial court suspend the license of the person so convicted or if he be an owner the certificate of registration of his motor cycle and, if no appeal therefrom be taken, or if an appeal duly taken be dismissed, or the judgment affirmed, and upon notice thereof by said clerk, the secretary of state shall revoke such license or in the case of an owner the certificate of registration of his motor cycle, and shall order the license or certificate of registration delivered to the secretary of state, and shall not reissue to him said license or certificate of registration or any other license or certificate of registration unless the secretary of state in his discretion, after an investigation or upon a hearing, decides to reissue or issue such license or certificate.

4. Any person who operates any motor cycle while a certificate of registration of motor cycles issued to him is suspended or revoked shall be guilty of a misdemeanor.

5. Any person making a false statement in the verified application for registration shall be guilty of a misdemeanor punishable by a fine of not exceeding fifty dollars.

6. Upon a third or subsequent conviction of the registered owner of a motor cycle for a violation of the provisions of section three hundred and six or an ordinance, rule or regulation regulating speed of motor cycles under section three hundred and seven, the secretary of state upon the recommendation of the trial court shall forthwith revoke the license of the person so convicted and no new license shall be issued to such person for at least six months after the date of such conviction nor thereafter except in the discretion of the said secretary of state.

7. Any person violating any of the provisions of any section of this article, which violation is stated separately to be a misdemeanor, is punishable by imprisonment for not more than one year or by a fine of not more than five hundred dollars, or by both, and for a violation of any other provision of this article, for which violation no punishment has been specified, shall be guilty of a misdemeanor punishable by a fine of not exceeding twenty-five dollars.

8. Certifying conviction to the secretary of state. Upon the conviction of any person for a violation of any of the provisions of this article

the trial court or the clerk thereof shall immediately certify the facts of the case, including the name and address of the offender, the judgment of the court and the sentence imposed, to the secretary of state, who shall enter the same in the book or index of registered motor cycles opposite the name of the person so convicted, and in the case of any other person, in a book or index of offenders to be kept for such purpose. If any such conviction shall be reversed upon appeal therefrom, the person whose conviction has been so reversed may serve on the secretary of state a certified copy of the order of reversal, whereupon the secretary of state shall enter the same in the proper book or index in connection with the record of such conviction.

9. Release from custody, bail, et cetera. In case any person shall be taken into custody charged with a violation of any of the provisions of this article, he shall forthwith be taken before the nearest magistrate, captain, lieutenant, clerk of the court or acting lieutenant who shall have the power of a magistrate and be entitled to an immediate hearing or admission to bail, and if such hearing cannot then be had, be released from custody on giving a bond or undertaking, executed by a fidelity or surety company authorized to do business in this state, or other bail in the form provided by section five hundred and sixty-eight of the code of criminal procedure, such bond or undertaking to be in an amount not exceeding one hundred dollars, if the charge be for a misdemeanor, except as herein provided where the charge is a violation of subdivision three of section three hundred and eight of this article, for his appearance to answer for such violation at such time and place as shall then be indicated. In case a person is taken into custody charged with being guilty of a felony in violation of any of the provisions of this article, such bond or undertaking shall be in an amount not less than one thousand dollars. On giving his personal undertaking to appear to answer any such violation at such time and place as shall then be indicated, secured by the deposit of a sum of money equal to the amount of such bond or undertaking, or in lieu thereof, in case the person taken into custody is the owner, by leaving the motor cycle, or in case such person taken into custody is not the owner, by leaving the motor cycle as herein provided with a written consent given at the time by the owner who must be present, with such officer; or in case such person is taken into custody because of a violation of any of the provisions of this article other than on a charge of violating any of the provisions of subdivision three of section three hundred and eight and such officer is not accessible, be forthwith released from custody on giving his name and address to the person making the arrest and depositing with such arresting officer the sum of one hundred dollars, or in lieu thereof, in case the person taken into custody is the owner, by leaving the motor cycle, or, in case such person taken into custody is not the owner, by leaving the motor cycle with a written consent at the time by the owner who must be present; provided that, in any such case, the officer making the arrest shall give a receipt in

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writing for such sum or motor cycle deposited and notify such person to appear before the most accessible magistrate, describing him, and specifying the place and hour. In case such bond or undertaking shall not be given or deposit made by the owner or other person taken into custody, the provisions of law in reference to bail, in case of a misdemeanor, shall apply, where the charge is a violation of subdivision three of section three hundred and eight of this article, the provisions of law in reference to bail in cases of a misdemeanor or a felony as the case may be shall apply exclusively.

10. Holding defendant to answer where magistrate has not jurisdiction to try offender; admitting to bail. In case the magistrate before whom any person shall be taken, charged with the violation of any provision of this article, shall not have jurisdiction to try the defendant, but shall hold the defendant to answer as provided by section two hundred and eight of the code of criminal procedure, he shall admit such defendant to bail upon his giving a surety company's bond or undertaking to appear to answer for such violation at such time and place as shall then be indicated, or upon his giving a written undertaking in the form provided in section five hundred and sixty-eight of the code of criminal procedure in a sum not exceeding one hundred dollars, except that in a case where the defendant is charged with a violation of any of the provisions of subdivision three of section three hundred and eight of this article, the provisions of law in reference to bail in cases of a misdemeanor or a felony as the case may be shall apply exclusively.

11. Disposition and return of bail. Such bail as may be deposited as herein provided shall be held by the officer accepting the same or the clerk of the court. Upon the person who has been taken into custody and given security or bail for his appearance surrendering himself for trial and upon the conclusion of such trial the court shall issue to the defendant an order upon the magistrate or clerk of the court or other officer authorized to accept bail or return or deliver back said security or bail as was given.

12. A conviction of violation of any provision of this article shall not be a bar to a prosecution for an assault or for a homicide committed by any person in operating a motor cycle. (*Added by L. 1916, ch. 72, in effect Apr. 1, 1916.*)

§ 309. Disposition of registration fees; fines and penalties; reports of criminal actions or proceedings.—1. Of the registration fees collected as herein provided, fifty per centum shall be paid by the secretary of state into the state treasury as provided in the state finance law. The remaining fifty per centum of each fee shall be paid by the secretary of state, on the first day of each month or within ten days thereafter, to the treasurer of the county in which the person paying the fee resides, unless such person resides in a county wholly contained within a city, in which case such fifty per centum shall be so paid to the chamberlain or other chief fiscal officer of such city.

2. All fines, penalties or forfeitures collected for violations of any of the provisions of this article or of any act in relation to the use of the public highways by motor cycles now in force or hereafter enacted, under the sentence or judgment of any court, judge, magistrate or other judicial officer having jurisdiction in the premises, whether imposed by statute or local ordinance, rule or regulation, shall be apportioned as follows: Fifty per centum to the state and fifty per centum to the county wherein the violation occurred, unless the same occurred in a county wholly contained within the boundaries of a city, in which case such fifty per centum shall be paid to such city. Such moneys shall be paid over by such court, judge, magistrate or other judicial officer, according to such apportionment, on the first day of each month or within ten days thereafter, as follows: The amount due the state, to the state treasurer, and the amount due to a county or city to the treasurer of the county or chamberlain or other chief fiscal officer of the city. Each such payment shall be accompanied with a statement, setting forth the actions or proceedings in which the moneys so paid were collected, the name and residence of the defendant in each case, the nature of the offense, and the fine, penalty, sentence or judgment imposed.

3. The portion of the fees, fines, penalties and forfeitures paid into the state treasury under this section shall be appropriated and used for the maintenance and repair of the improved roads of the state, under direction of the state commission of highways. The portion of the fees, fines, penalties and forfeitures paid to a county under this section shall be used exclusively for the maintenance and repair of state and county highways within the county and be subject to the draft of the state commission of highways. The portion of such fees, fines, penalties and forfeitures paid to a city wholly containing within its boundaries one or more counties shall be available for the ordinary expenses of such city unless otherwise specially provided by law.

4. On the first day of each month or within ten days thereafter, every judge, magistrate or clerk of a court having jurisdiction of the violation of any of the provisions of this article, shall make and forward to the treasurer of the state, a verified report of all criminal actions or proceedings instituted or tried before him or it during the preceding calendar month for violation of any of the provisions of this article, or of any statute or local ordinance, rule or regulation, which report shall set forth the name and address of the defendants, the nature of the offenses and the fines or penalties collected or imposed by such court, judge, magistrate or judicial officer, which report shall be open to inspection during reasonable business hours to any citizen of the state. On or before the first day of February of each year, the treasurer shall transmit to each branch of the legislature a statement showing the amount of receipts under this article during the preceding fiscal year paid into the state treasury. (*Added by L. 1916, ch. 72, in effect Apr. 1, 1916.*)

§ 310. **Acts repealed.**—All acts or parts of acts inconsistent with this article or contrary thereto are hereby expressly repealed. (*Added by L. 1916, ch. 72, in effect Apr. 1, 1916.*)

§ 320-a. **County system of roads.**—The board of supervisors of a county may provide for the construction or improvement of a highway or section thereof, in one or more towns of the county at the joint expense of the county and town or towns, and may prepare a map of a definite system of county roads for the county for such improvement.

The board may by resolution direct the county superintendent to supervise the preparation of grade and culvert work of a road, so designated by said map for improvement, by the town superintendent of the town in which such improvement shall be made, and, upon the completion thereof by the town, and the county superintendent's certification that the road is so prepared and that the town is equipped with sufficient machinery to properly perform the work, such machinery to be furnished by the town and used during the road's construction, the board may, by resolution order the construction of an improved road under the direction of a committee known as the highway officials of the county as hereinafter provided. The construction work shall be under the charge and supervision of the town superintendent of the town in which the work is being done. If for any cause the town superintendent is incapacitated or in the opinion of the county superintendent is incompetent to properly take charge of the work, some competent person shall be designated by the county superintendent by and with the advice and consent of the town board and the compensation of the town superintendent or person in charge shall be a town charge.

The employment of convict labor on roads so constructed shall be authorized and permitted, in the discretion of the superintendent of state prisons, upon the requisition of the county superintendent of highways. The board of supervisors of Erie county shall have power, if they deem it proper, to employ convicts, sentenced to be confined in a penitentiary situate within the territorial limits of such county and liable to be employed at hard labor, upon any highway or work connected therewith within such county, and such board of supervisors shall have power to make all necessary appointments, rules and regulations for such employment within such county, including the right to fix a per diem compensation for such employment at a rate not to exceed ten cents.

The highway officials of the county under this section shall consist of the county superintendent, three members of the board, appointed by the chairman. The supervisor of the town in which a road is being improved shall be a member of the said committee on all questions involving the work in the town of which he is the supervisor.

Unless the advice and direction of the highway officials shall be followed in the prosecution of the work, no liability therefor shall accrue to the county for its share of the cost of work.

Upon ordering the construction of an improved road under this section,

the board of supervisors shall, by resolution, determine the amount to be credited to a town or towns on account of preliminary grading and culvert work, estimate the amount to be credited to such town or towns for the expense of providing machinery and estimate the additional amount needed to complete such improvement and determine the proportions thereof to be borne by the county and town or towns respectively. The part, if any, of such additional amount to be borne by a town, as shown by such determination, shall be a town charge, and the residue shall be a county charge. The amounts to be borne by either shall be provided for by tax, to be levied upon the taxable property of the county or town, as the case may be, and collected in the same manner as for other town and county charges, respectively, and shall be paid into the county treasury. The board of supervisors may, in its discretion, appropriate and make immediately available from county funds either the whole of the moneys to complete the construction of such road or the part thereof to be provided by the county. If it shall determine that sufficient moneys are not available to pay the amount appropriated, or a specified part thereof, after defraying other county expenses, it may direct the county treasurer to borrow the same, in anticipation of taxes or of the proceeds of bonds to be issued as herein-after provided, and to pledge the faith and credit of the county for the payment of the amount when due, with interest, and issue temporary certificates of indebtedness therefor. The board may, by resolution, authorize the issuance and sale of bonds of the county for the amount appropriated or for any part thereof, which may be the whole of such additional amount needed for the completion of such improvement or the county's share thereof or a part of such share. The proceeds of such bonds shall be paid into the county treasury and applied to the cost of such improvement or to the payment and redemption of certificates of indebtedness, if any, issued as above provided. Upon petition of the town board of a town in which any part of the improved road is located, the board of supervisors may by resolution authorize the town to borrow a sufficient sum, to be specified in the resolution, for paying its share of such improvement, not exceeding the estimate above provided for of the town's share of the additional amount needed for completing an improvement which shall have been ordered by the board of supervisors. Town bonds may be issued and sold by the supervisor, in the name of the town, for the amount so authorized. The proceeds thereof shall be paid into the county treasury and be part of a fund to be applied to the cost of such improvement within the town or to the payment and redemption of county bonds, if any, issued to pay the share of such town. Upon like petition of a town board, before an improvement is ordered, the board of supervisors may authorize the issue and sale in like manner of town bonds to provide moneys to be disbursed by the town under this section for the preliminary grading and culvert work. County or town bonds issued under the foregoing provisions shall be payable not more than thirty years from their date and shall be

L. 1916, ch. 147.

Trees; to whom they belong.

§§ 332, 333.

sold for not less than par. The board of supervisors shall, from time to time, impose upon the taxable property of the county a tax sufficient to pay at maturity any such county bonds, and interest, and upon the taxable property of any town a tax sufficient to pay at maturity any such bonds of the town, and interest. Payments from time to time by the county treasurer of moneys provided for under this section shall be made for the prosecution of such work upon the certificate of the district or county superintendent countersigned by the chairman of the highway officials committee. Said orders shall be drawn to the order of the supervisors of the respective towns where roads are being constructed to be disbursed by them, upon the orders of the town superintendent or person designated in his stead, in the same manner as highway disbursements are now made and provided for, under the town highway bureau of the highway department.

Such highways, when completed and accepted by the board of supervisors, shall be thereafter repaired and maintained at the sole expense of the towns in which they are located, unless the board of supervisors shall apportion a share of the expense thereof upon the county. (*Added by L. 1914, ch. 61, and amended by L. 1915, ch. 556, and L. 1916, ch. 458, in effect May 9, 1916.*)

§ 332. Law of the road.

Driving on the left side of a highway is not a nuisance under section 1530 of the Penal Law, nor is it a misdemeanor within the meaning of section 43 of the Penal Law which involves a wrongful purpose. *People v. Martinitis* (1915), 168 App. Div. 446, 153 N. Y. Supp. 791.

Subd. 3.—Mallory v. Haynes (1915), 170 App. Div. 587, 588, 156 N. Y. Supp. 318.

§ 333. Trees; to whom they belong.—All trees standing or lying on land within the bounds of any highway, shall be for the proper use of the owner or occupant of such land, except that they may be required to repair the highway or bridges of the town. Where a right of way has been or shall be acquired, under the provisions of this chapter, for a state or county highway, the owner of the fee shall have and may harvest for his own use the fruit upon all fruit-bearing trees left standing from time to time within the right of way so acquired, until forbidden in writing by the governing board of the political subdivisions in which the title to such right of way vests. (*Amended by L. 1916, ch. 147, in effect Apr. 6, 1916.*)

INCOMPETENTS.

Code of Civil Procedure.

§ 2342. *Idem*; may be compelled to file the same, or render an additional account, et cetera.—In the month of February of each year, the presiding judge of the court by which the committee of the property was appointed, or if he was appointed by the supreme court, the county judge of the county where the order appointing him is entered, must examine, or cause to be examined, under his direction, all accounts and inventories filed by committees of the person and property, since the first day of February of the preceding year. If it appears, upon the examination, that a committee, appointed as prescribed in this title, has omitted to file his annual inventory or accounting, or the affidavit relating thereto, as prescribed in the last section, or if the judge is of the opinion that the interests of the person, with respect to whom the committee was appointed, requires that he should render a more full or satisfactory inventory or account, the judge must make an order requiring the committee to supply the deficiency, and also, in his discretion, personally to pay the expense of serving the order upon him. An order so made may be entered and enforced, and the failure to obey it may be punished, as if it were made by the court. Where the committee fails to comply with the order, within three months after it is made, or, where the judge has reason to believe that sufficient cause exists for the removal of the committee, the judge may, in his discretion, appoint a fit person special guardian of the incompetent person, with respect to whom the committee was appointed, for the purpose of filing a petition in his behalf for the removal of the committee and prosecuting the necessary proceedings for that purpose. The committee may be compelled in the discretion of the court to pay personally the costs of the proceedings so instituted. Where the examination of the accounts and inventories of committees of incompetent persons provided for herein is made pursuant to the order or direction of a county judge, the expense of such examination as allowed by the county judge directing the examination shall be payable by the county treasurer of the county out of any court funds in his hands upon the order of the county judge directing such examination. The committee of the property of an incompetent person appointed as prescribed in this title, may apply to the court making the appointment, for an order to permit him to render to such court an intermediate judicial account of all his proceedings affecting the property of the incompetent person to the date of the filing thereof. And the court upon examination may, in its discretion, make an order directing that such account be filed with the clerk of the court where the application is made, on or before the date determined by the order.

The account to be filed pursuant to such order shall be verified and contain a just, true and proper statement of all the acts of the committee, and an itemized statement of the receipts and disbursements of any and all moneys and properties that have come into hand covering the whole of the period for which the accounting is asked. A summary statement shall be included in the account and all vouchers shall be filed therewith. Notice of the filing of such account pursuant to such order and of an application for the judicial settlement thereof shall be given in the manner in which and to the persons to whom notice of application for the appointment of a committee of the person or property of an alleged incompetent person, lunatic, idiot or habitual drunkard is required to be given by title six of chapter seventeen of the code of civil procedure. Upon the return day of the notice of such application the court shall have the power to appoint a referee to take and state such account and to report to the court with his opinion thereon as to all matters embraced in said account. The court shall have power and it shall be its duty to appoint a suitable person as special guardian of the incompetent person for the protection of his rights and interests in said proceeding.

Upon the motion for a confirmation of the report of a referee appointed pursuant to the provisions hereof or if the accounting be had before the court, upon the court's determination, said account shall be then judicially adjusted, determined, fixed and filed.

The compensation of the referee and of the special guardian appointed under the provisions of this chapter shall in every instance be fixed by the court to be paid out of the estate, if any, of the incompetent person. The judicial settlement of the final account of a committee shall be made in the same manner, so far as may be applicable, as provided in this section for the judicial settlement of an intermediate account. (*Amended by L. 1916, ch. 535, in effect Sept. 1, 1916.*)

INDIAN LAW.

(L. 1909, ch. 31.)

§ 2. Power to contract.

Application.—This section, permitting a native Indian to take, hold and convey real estate the same as a citizen, has no reference to the right of an Indian tribe to convey or allot lands of its reservation. *Terrence v. Gray* (1916), 171 App. Div. 11, 156 N. Y. Supp. 916.

§ 7. Partition of tribal land.

Application.—Although this section permits a tribe owning lands in common to divide the same among the individuals and families of the tribe so that it may be held in severalty and in fee simple, said section does not contemplate the granting of a certain lot to a certain individual, but on the contrary authorizes a general division among the members of the tribe of lands which have been held in common. *Terrence v. Gray* (1916) 171 App. Div. 11, 156 N. Y. Supp. 916.

It will be presumed that tribal lands continue to be held in common where there

§ 102.

Allotment of lands.

is no evidence that a partition under section 7 of the Indian Law has been made. *Terrance v. Gray* (1916) 171 App. Div. 11, 156 N. Y. Supp. 916.

§ 102. Allotment of lands; St. Regis.

Application.—Sections 102 and 103 of the Indian Law, authorizing the St. Regis tribe to allot tribal lands to individual Indians, etc., does not make an Indian to whom lands have been allotted the owner in fee; it merely entitles him to the possession and use of the lands allotted which continue to be tribal lands. Hence, where, after the death of an Indian to whom lands have been allotted under said section, his heirs convey all his interest to another Indian and the tribe itself subsequently confirms his title and allots the lands to the grantee, he is entitled to judgment in an action of ejectment brought against the heirs of the prior owner who have regained possession by a forcible entry. *Terrence v. Gray* (1916), 171 App. Div. 11, 156 N. Y. Supp. 916.

The State courts have jurisdiction to determine an action of ejectment as between members of the St. Regis tribe of Indians. *Terrence v. Gray* (1916), 171 App. Div. 11, 156 N. Y. Supp. 916.

INSANITY LAW

(L. 1909, ch. 32.)

§ 7. **General powers as to state hospitals.**—*Subd. 1 amended by L. 1916, ch. 349, in effect Apr. 27, 1916, as follows:*

1. Have the general oversight of the state hospitals, and the control of all the property thereof; transfer such old machinery, boilers or equipment as are not needed by the state hospital in which the same is located to some other state hospital having use for such machinery, or sell or dispose of the same or any metal or rags, in the discretion of the commission, the money received therefor to be paid into the state treasury, and see that the purposes of such hospitals are carried into effect by the boards of managers according to law.

§ 11. **Annual report.**—The commission shall, annually, report to the legislature its acts and proceedings for the year ending June thirtieth last preceding, with such facts in regard to the management of the institutions for the insane as it may deem necessary for the information of the legislature, including estimates of the amounts required for the use of the state hospitals and the reasons therefor; and also so much of the annual reports made to the commission by the State Charities Aid Association and by the boards of managers of the state hospitals as the commission may deem necessary for the consideration of the legislature. The commission shall determine from time to time the capacity of each of the state hospitals and shall incorporate a statement of such capacity in its annual report to the legislature. (*Amended by L. 1910, ch. 111, and L. 1916, ch. 118, in effect Apr. 3, 1916.*)

§ 17. **Commission to provide for the prospective wants of the insane.**—The commission shall provide sufficient accommodations for the prospective wants of the poor and indigent insane of the state. To prevent overcrowding in the state hospitals, it shall recommend to the legislature the establishment of other state hospitals, in such parts of the state as in its judgment will best meet the requirements of such insane. It shall also furnish to the legislature in each year, an estimate of the probable number of patients who will become inmates of the respective state hospitals during the year beginning July first next ensuing, and, unless otherwise provided by law, an estimate of the cost of all the additional buildings and equipments, if any, which will be required to carry out the provisions of this chapter relating to the care, custody and treatment of the poor and indigent insane of the state. No money shall be expended for the erection of additional buildings, or for unusual repairs or improvements of state hospitals, except upon plans and specifications to be approved by the com-

§§ 40, 43, 45, 46.

State hospitals; boards of managers, etc.

L. 1916, ch. 118.

mission and the governor. No municipality of the state shall have the power to modify or change plans or specifications for the erection, repair or improvement of state hospital buildings or the plumbing or sewerage connected therewith. The commission may secure a blanket policy of insurance covering any or all of the buildings, property or fixtures of the state hospitals. (*Amended by L. 1912, ch. 121, and L. 1916, ch. 118, in effect Apr. 3, 1916.*)

§ 40. State hospitals for the poor and indigent insane.—*Subd. 10 amended by L. 1916, ch. 608, in effect May 20, 1916, as follows:*

10. Brooklyn State Hospital, at Flatbush, in the borough of Brooklyn, in the city of New York.

§ 43. General powers and duties of boards of managers.—*Subd. 6 amended by L. 1916, ch. 118, in effect Apr. 3, 1916, as follows:*

6. Make to the commission, in July of each year, a detailed report of the results of their visits and inspection, with suitable suggestions and such other matters as may be required of them by the commission, for the year ending on the thirtieth day of June preceding the date of such report. Such report shall be prepared by a committee of the board, subject to the approval of the board.

§ 45. General powers and duties of superintendent.—*Subd. 10 amended by L. 1916, ch. 118, in effect Apr. 3, 1916, as follows:*

10. See that all such accounts and records are fully made up to the last day of June in each year, and that the principal facts and results, with his report thereon, are presented to the board of managers within thirty days thereafter, who shall incorporate it in their report to the commission. The commission may prescribe the form of and the subjects to be embraced in such reports. Such superintendent shall make other reports at such times, in such manner and in respect to such matters as the board of managers or the commission may direct.

§ 46. Special provisions relating to Brooklyn State Hospital, Kings Park State Hospital, Central Islip State Hospital, and Manhattan State Hospital.—The hospital heretofore known as the Long Island State Hospital is divided into two parts. The part located at Kings Park shall be known as Kings Park State Hospital; the part located at Flatbush in the borough of Brooklyn, city of New York, shall be known as Brooklyn State Hospital. The hospital heretofore known as the Manhattan State Hospital is divided into two parts. The part located on Ward's Island, in the city of New York, shall be known as Manhattan State Hospital. The part located at Central Islip shall be known as Central Islip State Hospital. Each part of each of such hospitals shall, except as otherwise provided in this chapter, be deemed a separate and independent state hospital and all the provisions of this chapter relating to the management, maintenance and control of state hospitals and the appointment of resident officers, attendants and

L. 1916, ch. 607.

Purchasing stewards.

§§ 47, 50.

employees therein shall apply to each such state hospital. Patients shall be committed to and received at the Brooklyn State Hospital, the Kings Park State Hospital, the Central Islip State Hospital, and the Manhattan State Hospital in accordance with rules to be established by the state hospital commission. The commission may also adopt rules regulating the transfer of such patients from one to another of such hospitals. (*Amended by L. 1916, ch. 608, in effect May 20, 1916.*)

§ 47. **Purchasing steward for Brooklyn State Hospital, Kings Park State Hospital, Manhattan State Hospital, and Central Islip State Hospital.**—The office of purchasing steward for the Brooklyn State Hospital, Kings Park State Hospital, Manhattan State Hospital and Central Islip State Hospital, as heretofore established by the commission, is hereby abolished.

The resident steward or the assistant steward of each of such hospitals shall become the steward of the respective hospital which he now serves and his rank in the service shall be reckoned as though he had occupied the office of steward during the time that he has served as resident steward or assistant steward, and he shall possess all the powers and perform all the duties conferred or imposed on stewards of state hospitals by this chapter. (*Amended by L. 1911, ch. 719, and L. 1916, ch. 607, in effect May 20, 1916.*)

§ 50. **Salaries of certain officers and wages of certain employees prescribed.**—The officers or employees of the state hospitals now or hereafter classified as occupying offices or positions specified in the schedule at the end of this section shall hereafter receive the salaries or wages per month indicated opposite the name or title of such officer or position, except that where a minimum and maximum rate per month is prescribed, advancement from the minimum to the maximum rate shall be in accordance with the length of service, as prescribed in such schedule. If a minimum and maximum rate per month is not prescribed in such schedule, the salary or wages per month of such officer or employee shall be the amount indicated opposite the name or title of such office or position. Where an increase of salary or wages is allowed at a certain rate per month or otherwise for continuous service, continuous service performed prior to the time this section, as hereby amended, takes effect, in the same position or employment, shall be deemed a part of the continuous service in determining the salary or wages to which such officer or employee shall be entitled under this section. When employees are allowed to board and lodge away from the hospital on account of lack of accommodations in the institution a uniform rate of not less than sixteen dollars per month shall be allowed in addition to the regular monthly wages, and this amount shall be apportioned at the rate of four dollars per month for each meal and four dollars per month for lodging. Such employees shall, subject to the approval of the commission, be allowed the privileges granted to employees residing in the hospital.

SCHEDULE OF SALARIES AND WAGES.

1.

ADMINISTRATION DEPARTMENT.

Position.	Wages per month.	
	Minimum.	Maximum.
Man stenographer.....	\$70 00	\$80 00
Women stenographers.....	55 00	68 00
Watchmen		50 00
Policemen		50 00
Barbers	45 00	55 00
Coachman	55 00	60 00
Drivers		33 00
Pages and messenger boys.....	18 00	23 00

Increase of wages from minimum to maximum shall be made at the rate of two dollars per month for each six months of continuous service.

2.

FINANCIAL DEPARTMENT.

Position.	Wages per month.	
	Minimum.	Maximum.
Bookkeeper	\$95 00	\$105 00
Accountant	80 00	90 00
Voucher and treasurer's clerk.....	55.00	70 00
Storekeeper. Institutions having less than two thousand patients.....	55 00	70 00
Storekeeper. Institutions having two thousand or more patients.....	70 00	85 00
Man stenographer.....	70 00	80 00
Woman stenographer.....	55 00	68 00

Increase of wages from minimum to maximum shall be at the rate of two dollars per month for each six months of continuous service. Where a telegraph office is maintained in an institution an extra compensation of ten dollars per month shall be allowed to the person performing the service of operator.

3.

SUPERVISORS.

Position.	Wages per month.	
	Minimum.	Maximum.
Chief supervisors, men.....	\$55 00	\$68 00
Chief supervisors, women.....	50 00	62 00
Supervisors, men.....	50 00	62 00
Supervisors, women.....	43 00	55 00

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Increase of wages from minimum to maximum shall be at the rate of two dollars per month for each six months of continuous service.

4.

NURSES AND ATTENDANTS.

Position.	Wages per month.	
	Minimum.	Maximum.
Charge nurses, men.....	\$40 00	\$47 00
Charge nurses, women.....	34 00	40 00
Nurses, men.....	35 00	43 00
Nurses, women.....	30 00	35 00
Charge attendants, men.....	35 00	43 00
Charge attendants, women.....	30 00	35 00
Attendants, men.....	26 00	34 00
Attendants, women.....	19 00	25 00
Special attendants, men.....	43 00	50 00
Special attendants, women.....	35 00	43 00

Increase of wages from minimum to maximum shall be at the rate of two dollars per month for each six months of continuous service. An attendant or nurse performing night service for a period of one month succeeding the first day of the month shall be entitled to two dollars per month in addition to regular wages.

All attendants and all special attendants whether in immediate charge of patients or otherwise shall receive at least the wages designated in the above schedule.

5.

DOMESTIC SERVICE.

Position.	Wages per month.	
	Minimum.	Maximum.
Housekeepers	\$35 00	\$40 00
Waitresses and chambermaids.....	20 00	23 00

Increase of wages from minimum to maximum shall be at the rate of two dollars per month for each six months of continuous service.

6.

KITCHEN SERVICE.

Position.	Wages per month.	
	Minimum.	Maximum.
Chefs, men.....	\$95 00
Head cooks, men.....	55 00
Head cooks, women.....	55 00
Cooks, men.....	35 00
Cooks, women.....	35 00
Assistant cooks, women.....	30 00

	Wages per month.	
	Minimum.	Maximum.
Kitchen helpers, men.....	\$25 00	30 00
Kitchen helpers, women.....	18 00	25 00

The wages of kitchen helpers shall be increased from minimum to maximum at the rate of two dollars per month for each six months of continuous service.

7.

BAKERY SERVICE.

Position.	Wages per month.
Baker	\$68 00
Assistant baker.....	45 00
Bakers' helpers.....	35 00

8.

MEAT CUTTERS.

Position.	Wages per month.
Meat cutters. Institutions having less than two thousand patients	\$62 00
Meat cutters. Institutions having two thousand or more patients	68 00

9.

LAUNDRY SERVICE.

Position.	Wages per month.
Laundry overseer.....	\$65 00
Launderers	35 00
Head laundress.....	35 00
Laundresses	22 00

10.

ENGINEER'S DEPARTMENT.

Position.	Wages per month.	
	Minimum.	Maximum.
Chief engineer.....	\$130 00
Engineer's assistants, first grade.....	82 00
Engineer's assistants, second grade.....	68 00
Engineer's assistants, third grade.....	55 00
Electrical engineer.....	100 00
Electrical engineer's assistants, first grade.....	82 00
Electrical engineer's assistants, second grade.....	68 00

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	Wages per month.	
	Minimum.	Maximum.
Electrical engineer's assistants, third grade.....	55 00
Lineman	50 00
Plumbers and steam fitters.....	78 00
Plumbers and steam fitters' helpers.....	\$30 00	42 00
Firemen, eight-hour shifts.....	45 00
Firemen, twelve-hour shifts.....	65 00

Plumbers and steam fitters' helpers shall receive an increase from minimum to maximum at the rate of two dollars per month for each six months of continuous service.

11.

BUILDING DEPARTMENT.

Position.	Wages per month.	
Master mechanic.....	\$130 00	
Supervising carpenter.....	110 00	
Head carpenter.....	78 00	
Carpenters	68 00	
Painters	68 00	
Tinsmiths	68 00	

12.

INDUSTRIAL DEPARTMENT.

Position.	Wages per month.	
	Minimum.	Maximum.
Shop foreman.....	\$64 00
Tailor	55 00	64 00
Shoemaker	55 00	64 00

Increase of wages of tailor and shoemaker from minimum to maximum shall be at the rate of two dollars per month for each six months of continuous service.

13.

FARM AND GROUNDS DEPARTMENT.

Position.	Wages per month.	
	Minimum.	Maximum.
Head farmer.....	\$64 00	\$68 00
Dairyman	50 00	55 00
Farmers	35 00	43 00
Herdsmen	35 00	43 00
Gardeners	50 00	55 00
Florists	55 00	64 00
Drivers	33 00

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	Wages per month.	
	Minimum.	Maximum.
Laborers		30 00
Blacksmiths		68 00

Increase of wages from minimum to maximum shall be at the rate of two dollars per month for each six months of continuous service. The provisions of this section with respect to the rate of wages to be paid employees in all positions named in the foregoing schedules shall supersede the provisions of any other general or special law. (*Amended by L. 1912, ch. 43, L. 1915, ch. 549, and L. 1916, ch. 608, in effect May 20, 1916.*)

§ 51. **Quarterly estimate of expenditures.**—*Subd. 7 amended by L. 1916, ch. 118, in effect Apr. 3, 1916, as follows:*

7. Balance all accounts on his books, annually, for the year ending on the last day of June, and make a statement thereof and an abstract of the receipts and payments of the past year and deliver the same, within thirty days, to the commission.

§ 86. **Liability for the care and support of the insane other than the poor and indigent.**

Liability of mother's estate for maintenance of daughter.—*Matter of Willis (1916), 94 Misc. 29.*

§ 93. **Habeas corpus.**

Procedure.—The provisions of the Insanity Law, conferring upon one in custody as an insane person a right to a writ of habeas corpus to determine his sanity, do not prescribe the procedure in such cases and hence it is regulated by the provisions of the Code of Civil Procedure, which among other things, vest the Supreme Court at Special Term with full and complete authority to entertain and finally determine such proceedings. *People ex rel. Woodbury v. Hendrick (1915), 168 App. Div. 553, 153 N. Y. Supp. 188.*

§ 110. **Retirement fund created; custody and control.**—A permanent fund for the payment of annuities to employees of the New York state hospitals for the insane in the employ of the state of New York is hereby established to the benefits of the provisions of this section as hereinafter provided; moneys received from donations, gifts and bequests; moneys received from deductions for leave of absence without pay, for not less than twenty-four hours nor more than thirty days in any one year; moneys received from deductions for sickness for not less than twenty-four hours nor more than ninety days in any one year, and moneys received from other sources. The treasurer or other officer of any state hospital who collects or receives moneys, hereby declared to be part of such fund, shall pay to the comptroller of the state of New York, who shall place the same in such fund, which shall be invested by him and the money received from interest thereon shall be credited to said fund. All moneys belonging to the fund herein provided for shall be received by the comptroller of the state of

L. 1916, ch. 607.

Retirement fund.

§§ 111, 112.

New York who shall have charge of the administration thereof, and who shall pay therefrom the annuities, payable quarterly throughout life, or other benefits that may become due and payable hereunder. The retirement board provided for in this article shall from time to time establish such reasonable rules and regulations for the administration and investment of such fund as will insure the perpetuation thereof. The comptroller of the state of New York shall report annually for the fiscal year to the retirement board the condition of said fund in detail, giving all items of receipts and disbursements and his recommendation in regard thereto. This report shall be published with and as a part of the annual report of the state hospital commission. (*Added by L. 1912, ch. 59, and amended by L. 1916, ch. 607, in effect May 20, 1916.*)

§ 111. **Retirement of employees.**—Any employee of the New York state hospitals for the insane, including the Matteawan and Dannemora hospitals for criminal insane, who shall have signified his or her intention to take advantage of the provisions of this article and who shall faithfully and honestly discharge his or her duty in one or more of such state hospitals, or in any former city or county asylum, now a state hospital for the insane, or partly in each, for twenty-five years, shall upon his or her application to the retirement board be entitled to retirement; provided, however, in the opinion of such board, there is sufficient money in the fund to warrant such retirement. Every applicant must be in the service of a state hospital for the insane, as hereinbefore provided, at the time application is made for retirement, and shall remain in the said service until notified by the retirement board of his or her retirement. Any person retired pursuant to the provisions of this section must be awarded, granted and paid from said retirement fund an annual amount equal to one-half of the wages or compensation, including maintenance, as fixed by the state hospital commission or by statute received by him or her, for the year immediately preceding the application for retirement, provided, however, that no person shall receive such annuity until he or she shall have paid into the said fund, by deductions from his or her wages, or by contribution in full, an amount equal to fifty per centum of his or her first year's annuity, and provided further that any such person who has been reduced in grade after twenty-five years of service shall be retired at the rate of wages and maintenance received by him or her during the twenty-fifth year of service. Such annuity shall become effective from the first of the month immediately subsequent to the date of the meeting of the retirement board taking action on same, and shall be for the natural life of such person and payable in quarterly installments, and shall not be revoked, repealed, diminished or subject to claim of creditors. (*Added by L. 1912, ch. 59, and amended by L. 1916, ch. 607, in effect May 20, 1916.*)

§ 112. **Proceedings for retirement; physical disability.**—The retirement board shall have power upon its own motion or upon the application in

writing of any person entitled to the benefit of the retirement fund to retire any such person who shall have faithfully and honestly discharged his or duties in one or more of such state hospitals, including the Matteawan and Dannemora state hospitals for criminal insane, or former city or county asylum now a state hospital, or partly in each, for twenty-five years, or who shall have performed such duties for fifteen years or more, faithfully and honestly and who shall have become mentally or physically incapacitated by reason of accident or illness, provided, however, that reasonable notice in writing shall be given by the board or one of its members of its proposed action, to the person intended to be retired and an opportunity afforded to such person to be heard before the final action is taken by said board, and said board shall certify in writing the reason for such retirement, and that the best interests of the public service demand the same. To aid in such determination, the board may cause the person intended to be retired, to be physically examined by the medical examiners hereinafter provided for. Any person retired pursuant to the provisions of this section must be awarded, granted and paid from said retirement fund an annual amount equal to as many twenty-fifths of one-half of the wages or compensation, including maintenance received by him or her for the year immediately preceding the application for retirement as he or she has served years, provided, however, in the opinion of the retirement board, there is sufficient money in the fund to warrant such retirement, and provided further that no person shall receive such annuity until he or she shall have paid into said fund by deductions from his or her wages or by contribution in full an amount equal to fifty per centum of his or her first year's annuity. Such annuity shall become effective from the first of the month immediately subsequent to the date of the meeting of the retirement board taking action on same, shall be payable in quarterly * installments and shall not be diminished or subjected to the claims of creditors. Employees retired for disability under the provisions of this section shall be subject to an examination by a medical examiner or board appointed by the retirement board, or by the retirement board itself; and in the event of an employee so retired becoming able to perform active service again, he or she shall be reinstated by the superintendent on the certificate of the retirement board that such retired employee is again able to perform duty, and such annuity shall cease upon the date of such reinstatement. (*Added by L. 1912, ch. 59, and amended by L. 1916, ch. 607, in effect May 20, 1916.*)

§ 113. **Retirement for disability caused by injury.**—Any employee of a New York state hospital for the insane who shall have signified his or her intention to take advantage of the provision of this article and who upon the report of the medical examiner hereinafter provided for to the retirement board, has become totally disabled by reason of an injury received in the line of duty or at the hands of a patient of any New York state hospital

* So in original.

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§§ 114, 115.

for the insane, including the Matteawan and Dannemora state hospitals for criminal insane, and incapacitated for performing the duties of the position, shall be retired with such allowances as under the circumstances may appear fitting to the retirement board, independently of length of service, but such allowance shall not be less than ten twenty-fifths of one-half of the wages, including maintenance, provided, however, in the opinion of the retirement board, there is sufficient money in the fund to warrant such retirement, and provided further that no person shall receive such annuity until he or she shall have paid into the said fund by deductions from his or her wages or by contribution in full an amount equal to fifty per centum of his or her first year's annuity. Such annuity shall become effective from the first of the month immediately subsequent to the date of the meeting of the retirement board taking action on same, shall be payable in quarterly installments, and shall not be diminished or subject to the claim of creditors. Employees retired for disability under the provisions of this section shall be subject to an examination by a medical examiner or board appointed by the retirement board, or by the retirement board itself; and in the event of an employee so retired becoming able to perform active service again, he or she shall be reinstated by the superintendent on the certificate of the retirement board that such retired employee is again able to perform duty, and such annuity shall cease upon the date of such reinstatement. (*Added by L. 1912, ch. 59, and amended by L. 1916, ch. 607, in effect May 20, 1916.*)

§ 114. **Term of service; how computed.**—The term of service of an employee of the New York state hospitals for the insane shall be computed according to the time such person was upon the pay-roll of any state hospital, including the Matteawan and Dannemora state hospitals for criminal insane, or any city or county asylum now a New York state hospital for the insane. Except that the period of time during which any employee is not a participant in the fund and not entitled to the benefits of this article shall not be considered in computing his or her time of service. Any time for which any contribution may have been repaid to an employee as provided in section one hundred and sixteen shall not, in case the employee re-enters the service, be counted or considered in making retirements, unless the amount of such repayment shall be paid into the fund, with interest at the rate of four per centum from the time it was repaid to the employee. (*Added by L. 1912, ch. 59, and amended by L. 1916, ch. 607, in effect May 20, 1916.*)

§ 115. **Contributions to retirement fund.**—Every employee of the New York state hospitals for the insane who shall have signified his or her intention to take advantage of the provisions of this article shall contribute to said fund and the treasurer or other officer of any state hospital as hereinbefore provided shall at the end of the first full calendar month after this section as hereby amended takes effect deduct and retain monthly

from the wages and maintenance of such persons and pay to the comptroller of the state of New York who shall credit the said fund by amounts as follows: Persons who have performed such duty for less than five years, one per centum. Persons who have performed such duty for more than five years and less than ten years, one and one-half per centum. Persons who have performed such duty for more than ten years and less than fifteen years, two per centum. Persons who have performed such duty for more than fifteen years and less than twenty years, two and one-half per centum. Persons who have performed such duty for more than twenty years, three per centum. Such payments shall cease when a person has paid for twenty-five years, or who has been retired pursuant to the provisions of this article. Every person to whom this article applies who shall have signified his or her intention to take advantage of this article, who shall continue in the employ of the New York state hospitals for the insane after this article takes effect, as well as every person to whom this article applies who may hereafter be appointed to a position or place, shall be deemed to consent and agree to the deductions made and provided for herein, and shall receipt in full for the wages, pay or compensation which shall be paid monthly or at any other time, and such payment shall be a full and complete discharge and acquittance of all claims or demands whatsoever for the services rendered by such person during the period covered by such payment, notwithstanding the provisions of any other law, rule or regulation affecting the wages, pay or compensation of any person or persons employed in the New York state civil service to whom this article applies. Every employee entering the service of the New York state hospitals on and after the first day of the calendar month after this section as hereby amended takes effect and who is not for any reason exempted from the benefits of this article, shall contribute and continue to contribute thereto to the retirement fund at the rate of two per centum per month of his or her wages including maintenance. All employees participating in the retirement fund at the time this section as hereby amended takes effect or employed hereafter or reinstated shall, subject to the provisions of this act, continue to participate while they remain in the state hospital service. All employees in the state hospital service prior to the twenty-second day of March, nineteen hundred and twelve, who are not participants in the retirement fund may become such by signifying their desire to do so to the retirement board within the thirty days next following the time this section as hereby amended takes effect and shall continue to be participants while they remain in the state hospital service. (*Added by L. 1912, ch. 59, and amended by L. 1916, ch. 607, in effect May 20, 1916.*)

§ 116. **Repayments where retirement is without fault of employee; payments in case of death.**—Any person who has not become entitled to a retirement allowance, who loses his employment by reason of reduction of force or any change due to the action of the hospital authorities, and not

L. 1916, ch. 607.

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owing to his own default or misconduct, shall be entitled to receive on retirement the aggregate amount of his contribution to the fund or funds from which the retirement allowances are to be paid, and shall not be entitled to any further benefit under this article. In case of death of an annuitant occurring between quarterly payments, the estate of the deceased annuitant shall be paid the amount due the annuitant at the day of death. Such amount shall be accepted as a complete discharge and acquittance of all claims or demands whatsoever against the retirement fund. In case of death of an employee who has made at least two payments, his estate shall either be reimbursed in the amount contributed by him, or in such sum as the retirement board may deem proper. (*Added by L. 1912, ch. 59, and amended by L. 1916, ch. 607, in effect May 20, 1916.*)

§ 117. Forfeiture of right to annuity by default in making contributions.—Any employee who has been granted retirement pursuant to the provisions of this article and who does not make all necessary contributions required herein, within ninety days after notice of such retirement, shall forfeit his or her right to said annuity, and shall not be entitled to retirement except upon reapplication to the retirement board. (*Added by L. 1912, ch. 59, and amended by L. 1916, ch. 607, in effect May 20, 1916.*)

§ 119. Retirement board created.—The retirement board hereinbefore mentioned, shall be composed of the comptroller of the state of New York, the medical member and the legal member of the New York state hospital commission, which board shall have general jurisdiction over and authority to pass upon all questions that may arise under the provisions of this article. (*Added by L. 1912, ch. 59, and amended by L. 1912, ch. 283, and L. 1916, ch. 607, in effect May 20, 1916.*)

§ 122. Expenses of administration.—All of the expenses involved in the administration and operation of the fund, not performed in the respective hospitals involved, shall be paid from the retirement fund on the audit of the retirement board, including salaries for any positions which the board may deem necessary.

Any person who shall not have notified the retirement board to the contrary in writing on or before the twenty-first day of April, nineteen hundred and twelve, pursuant to the former provisions of this section shall continue to be deemed to have signified his or her intention at that time to take advantage of the provisions of this article. (*Added by L. 1912, ch. 59, and amended by L. 1916, ch. 607, in effect May 20, 1916.*)

§ 133. Medical superintendent as treasurer of the hospital.—The medical superintendent shall be the treasurer of the hospital, and before entering upon his duties, shall file with the comptroller of the state his undertaking to the people with sureties to be approved by the superintendent of state prisons, to the effect that he will faithfully perform his trust as such treasurer. He shall have the custody of the moneys, securities and obli-

gations belonging to the hospital and not required by law to be or remain in the custody of the comptroller or in the state treasury, and shall open with some bank, in the vicinity of the hospital, to be selected with the approval of the comptroller, an account in his name as such medical superintendent, and immediately deposit in such bank all moneys received by him as such medical superintendent and treasurer, and shall draw therefrom only for the use of the hospital and in the manner provided by the by-laws and upon the order of the steward, specifying the object of each payment. He shall keep a full and accurate account of the receipts and payments, as directed by the by-laws, and of such other matters as the superintendent of state prisons and the state hospital commission may prescribe, and balance all his accounts, annually, on the thirtieth day of June, and within ten days thereafter deliver to the superintendent of state prisons a statement thereof and an abstract of such receipts and payments for the past year. His books and vouchers shall at all times be open to the inspection of the superintendent of state prisons and the commission, and they may at any time require of him a statement of his accounts and of the funds and property in his custody. (*Renumbered by L. 1912, ch. 59, and amended by L. 1916, ch. 118, in effect Apr. 3, 1916.*)

§ 153. Medical superintendent as treasurer of the hospital.—The medical superintendent shall be the treasurer of the hospital, and before entering upon his duties, shall file with the state comptroller his undertaking to the people with sureties, to be approved by the superintendent of state prisons, to the effect that he will faithfully perform his trust as such treasurer. He shall have the custody of the moneys, securities and obligations belonging to the hospital and not required by law to be or remain in the custody of the comptroller or in the state treasury, and shall open with some bank, in the vicinity of the hospital, to be selected with the approval of the comptroller, an account in his name as such medical superintendent, and immediately deposit in such bank all moneys received by him as such medical superintendent and treasurer, and shall draw therefrom only for the use of the hospital and in the manner provided by the by-laws and upon the order of the steward, specifying the object of each payment. He shall keep a full and accurate account of the receipts and payments, as directed by the by-laws, and of such other matters as the superintendent of state prisons may prescribe, and balance all his accounts, annually, on the thirtieth day of June, and within ten days thereafter deliver to the superintendent of state prisons, a statement thereof and an abstract of such receipts and payments for the past year. His books and vouchers shall at all times be open to the inspection of the superintendent of state prisons, who may at any time require of him a statement of his accounts and of the funds and property in his custody. (*Renumbered by L. 1912, ch. 59, and amended by L. 1916, ch. 118, in effect Apr. 3, 1916.*)

§ 155. Powers and duties of medical superintendent and assistants.—

Subd. 7, amended by L. 1916, ch. 118, in effect Apr. 3, 1916, as follows:

7. See that all accounts and records are fully made up to the last day of June in each year, and present the principal facts and results, with his report thereon, to the superintendent of state prisons, within forty days thereafter. The resident officers, before entering upon their duties as such, shall severally take and file in the office of the secretary of state, the constitutional oath of office. The first assistant physician shall perform the duties and be subject to the responsibilities of the superintendent in his sickness or absence. The steward may personally purchase any supplies for the use of such hospital, but only in the name of the medical superintendent, and in each instance by his direction and not otherwise. (*Section renumbered by L. 1912, ch. 59, and amended by L. 1912, ch. 121. Subd. 7 amended by L. 1916, ch. 118, in effect Apr. 3, 1916.*)

INSURANCE LAW.

(L. 1909, ch. 33.)

§ 1. Short title and application.

Application to foreign corporations.—Where, in an action against a foreign corporation to recover upon a life insurance policy, it is not alleged where the policy was delivered and the pleadings are insufficient to show or raise a presumption that it was made or delivered in this State, the Insurance Law of this State does not apply to regulate its form or legal effect, and, therefore, a demurrer to a separate defense should be overruled. *Mees v. Pittsburgh Life & Trust Co.* (1915), 169 App. Div. 86, 154 N. Y. Supp. 660.

§ 9. Certificate of authorization of superintendent.

Statute of limitations.—A foreign insurance company, having a license to transact business in this state, may avail itself of the Statute of Limitations, when applicable. *Corney v. United Surety Co.* (1916), 217 N. Y. 268, affg. 160 App. Div. 698.

§ 45. Forms of report to be furnished by superintendent.

Report by foreign insurance company.—A foreign insurance company which has established a branch in the United States, and reinsured another company on risks located here and in points without the United States, should report all business applying to such reinsurance in the statements of the branch, and charge itself therein with all liability thereunder. *Atty. Genl. Opin.*, 4 State Dep. Rep. 539 (1915).

§ 58. Policy to contain entire contract.

The intent of this section is to require insurance companies when issuing policies to set out therein the entire contract of insurance, and every statement or representation which induced the company to enter into the agreement and upon which it relied in so doing must be annexed to and made a part of the policy in order to be thereafter available as a defense. *Archer v. Equitable Life Assurance Society* (1915), 169 App. Div. 43, 154 N. Y. Supp. 519, affd. 218 N. Y. 181.

Application.—An insurer who issues a policy covering only death by accidental means is, nevertheless, engaged in the business of life insurance and is within the provisions of this section, which provides that the policy shall contain the entire contract, and that all statements purporting to be made by the insured shall, in the absence of fraud, be deemed representations and not warranties, and that any waiver of the section shall be void. *Moore v. Prudential Casualty Co.* (1916), 170 App. Div. 849, 156 N. Y. Supp. 892.

A representation is a verbal or written statement made by the insured to the underwriter before the subscription of the policy as to the existence of some fact or state of facts tending to induce the underwriter more readily to assume the risk by diminishing the estimate he would otherwise have formed of it. It is not part of the contract but is collateral to it. *Moore v. Prudential Casualty Co.* (1916), 170 App. Div. 849, 156 N. Y. Supp. 892.

Statements constituting representation.—Statements made by the insured in an application for an accident policy as to the name of his employer, the nature of his employment, and his relationship to the beneficiary named by him are under

the statute representations and not warranties. Hence, the alleged falsity of said representations does not vitiate the contract, unless they were fraudulent in that they were made by the insured knowing them to be false, were material, and were relied upon by the insurer as an inducement to making the contract. As the statute prohibits the waiver of its provisions, the mere fact that the policy calls said statements of the insured warranties does not operate to make them so in law. *Moore v. Prudential Casualty Co.* (1916), 170 App. Div. 849, 156 N. Y. Supp. 892.

An alleged misstatement as to the name of the present employer of the insured is not material and not to be considered as an inducement to the contract, especially where there is no evidence that the insured knew the statement to be false. The same is true of an alleged false statement as to the relationship of the insured to the beneficiary named by him. *Moore v. Prudential Casualty Co.* (1916), 170 App. Div. 849, 156 N. Y. Supp. 892.

A defense of fraudulent representations of the insured in his application as to his life, habits and other insurance cannot be sustained where the application or statements of the insured are not attached to and made a part of the policy as required by this section. *Mees v. Pittsburgh Life & Trust Co.* (1915), 169 App. Div. 86, 154 N. Y. Supp. 660.

The defense to an action on an insurance policy averred that the insured, when applying for and as an inducement to the issuance of the policy, intentionally deceived the defendant by representations which he knew to be false, and the defendant relied and acted upon them in accepting the application and making the contract. The false representations related to facts which would enter into the estimation by defendant of the risk to be assumed by it in effecting the insurance, that is, to the prior physical condition of the insured the last time he had consulted with a physician, the causes of the deaths of his parents and the time of the death and age at death of his father. They were not contained in the policy either directly or by reference. It was held that because of the provisions of this section the defense was insufficient. *Archer v. Equitable Life Assurance Society* (1916), 218 N. Y. 18, affg. 169 App. Div. 43, 154 N. Y. Supp. 519.

Evidence of false representations.—In an action by a beneficiary to recover upon a life insurance policy, evidence of false representations on the part of the insured in procuring the issuance of the policy are inadmissible in defense, where such representations were not indorsed upon or attached to the policy as required by this section. So also evidence as to a collateral agreement to the effect that the policy was not to take effect until the first premium was paid during the good health of the insured, it being alleged at the time the first premium was paid he was not in good health, is not admissible where such agreement is not a part of the policy. *Archer v. Equitable Life Assurance Society* (1915), 169 App. Div. 43, 154 N. Y. Supp. 519, affd. 218 N. Y. 181.

Burden of proof.—Where the insurer seeks to avoid a recovery upon an accident policy upon the ground that the representations were untrue it is under the burden of showing that the answers were material to the contract, were false and were relied upon by it, otherwise there is no fraud which invalidates the policy. *Moore v. Prudential Casualty Co.* (1916), 170 App. Div. 849, 156 N. Y. Supp. 892.

§ 63. Proceedings against and liquidation of delinquent insurance corporations.

Provability of claims against assets of insolvent surety company.—An insurance company having been declared insolvent and the superintendent of insurance having taken charge of its affairs, an order of dissolution was granted. The superintendent rejected as contingent certain claims against the estate arising out of bonds given pursuant to a statute of the United States for the faithful perform-

ance of contracts by contractors for government work. It was held, that (1) claims upon which causes of action had accrued and upon which actions against the surety had been commenced before the date of the entry of the order of liquidation in which actions judgments on that date had not been entered, were certain and absolute at the date of the entry of the order of liquidation, and they should be allowed to participate in the ratable division of the assets of the insolvent surety company. (2) Claims upon which no causes of action against the surety had accrued before the date of the entry of the order of liquidation and upon which claims no actions were commenced until after the date of the entry of the order of liquidation are contingent and were properly rejected. *Matter of Empire State Surety Co.* (1915), 216 N. Y. 273, revg. 167 App. Div. 341, 153 N. Y. Supp. 146.

Where statute of foreign state provides that liquidation of insolvent insurance companies shall be made by insurance commissioner of that state for benefit of creditors thereof, such commissioner being vested with title to property of company for that purpose, an attachment will not be issued against property of company within this state. See *Martyne v. American Union Fire Ins. Co.* (1915), 216 N. Y. 183 affg. 168 App. Div. 380.

§ 87. **Contingency reserve.**—Any domestic life insurance corporation may accumulate and maintain in addition to an amount equal to the net values of its policies computed according to the standard adopted by it under section eighty-four of this chapter a contingency reserve not exceeding the following respective percentages of said net values, to wit: When said net values are less than one hundred thousand dollars, twenty per centum thereof or the sum of ten thousand dollars, whichever is the greater; when said net values are greater than one hundred thousand dollars, the percentage thereof measuring the contingency reserve shall decrease one-half of one per centum for each one hundred thousand dollars of said net values up to one million dollars; one-half of one per centum for each additional one million dollars up to ten million dollars; one-half of one per centum for each additional two million five hundred thousand dollars up to twenty million dollars; one-fourth of one per centum for each additional five million dollars up to fifty million dollars; and if said net values equal or exceed the last mentioned amount, the contingency reserve shall not exceed seven and one-half per centum thereof; provided that as the net values of said policies increase and the maximum percentage measuring the contingency reserve decreases such corporation may maintain the contingency reserve already accumulated hereunder, although for the time being it may exceed the maximum percentage herein prescribed, but may not add to the contingency reserve when the addition will bring it beyond the maximum percentage. Provided however that nothing herein contained shall be construed to affect any existing surplus or contingency reserves held by any such corporation save that whenever the existing surplus and contingency reserves, exclusive of said net values and of all accumulations held on account of existing deferred dividend policies or groups of such policies, shall exceed the limit above mentioned it shall not be entitled to maintain any additional contingency reserve. Provided further that for cause shown the superintendent of insurance may at any time and from

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Life insurance; new business.

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time to time permit any corporation to accumulate and maintain a contingency reserve in excess of the limit above mentioned for a prescribed period, not exceeding one year under any one permission, by filing in his office a decision stating his reasons therefor and causing the same to be published in his next annual report. This section shall not apply to any corporation doing exclusively a non-participating business. (*Amended by L. 1916, ch. 119, in effect Apr. 3, 1916.*)

§ 91. Business to be accepted from licensed agents only.

Constitutionality.—The provisions of this section to the effect that no life insurance company shall pay an agent commissions for services in obtaining new insurance unless such person has procured authority to act as agent of the company and that such certificate shall be issued by the Superintendent of Insurance upon a form approved by him giving such information as he may require and that said Superintendent may "refuse to issue or renew such certificate in his discretion," is not unconstitutional on the theory that it vests the Superintendent of Insurance with arbitrary power to prevent a person from pursuing a lawful calling. The section may be construed to mean that the Superintendent of Insurance is clothed with power to determine whether an applicant for an agency has complied with the statute, and such construction, which renders the statute constitutional, will be adopted. *Stern v. Metropolitan Life Ins. Co.* (1915), 169 App. Div. 217, 154 N. Y. Supp. 472.

§ 92. No forfeiture of policy without notice.

When notice to pay premium not sufficient to authorize forfeiture.—A notice to the insured entitled, "No forfeiture of policy without notice," which fails to state that the policy will become forfeited if payment is not made "by or before the day it falls due," is not sufficient to authorize a forfeiture for non-payment of premium. *Flint v. Provident Life & Trust Co.* (1915), 215 N. Y. 254, affg. 157 App. Div. 885.

§ 96. Limitation of new business.—No domestic life insurance corporation shall issue in any year new policies for a larger amount in the aggregate than as follows, to wit: If the total amount of insurance by said corporation in force on the thirty-first day of December of the preceding year is more than fifty million dollars, and not in excess of one hundred million dollars, not more than thirty-five per centum thereof; if more than one hundred million dollars, and not in excess of three hundred million dollars, not more than thirty per centum thereof, or thirty-five million dollars, whichever is the larger; if more than three hundred million dollars, and not in excess of six hundred million dollars, not more than twenty-five per centum thereof or ninety million dollars, whichever is the larger; if more than six hundred million dollars, not more than one hundred and fifty million dollars, or it may increase its new business over the largest amount issued in any one of the three years immediately preceding in the proportion in respect to said amount which the difference between twenty-five per centum of its net renewal premiums computed according to the bases of mortality and interest assumed in calculating its liabilities, and its total expenses for such preceding year, after deducting from said total expenses,

(1) the items of the first year expenditure specified in the first sentence of section ninety-seven of this chapter, (2) its actual investment expenses (not exceeding one-fourth of one per centum of the mean invested assets) and (3) taxes on real estate and other outlays exclusively in connection with real estate, bears to said net renewal premiums; provided, that in determining the amount of insurance in force and the amount of new insurance issued, policies of reinsurance, group insurance granted on the same plan within each group, under a contract with a given person, firm or corporation, covering groups of not less than one hundred lives all in the employ of such person, firm or corporation, and industrial policies issued upon the weekly premium plan and all premiums on such policies and the expenses in connection with such policies, shall be excluded and there shall be included only that insurance upon which the first premium or instalment thereof has actually been received. If it appear that in the ordinary course of its business for any calendar year the amount of insurance issued by any corporation will probably exceed the limitation imposed by this section, the superintendent of insurance may before the expiration of such year authorize such corporation in writing to issue additional insurance not to exceed ten per centum of the limitation for such year; but such additional insurance shall be charged as a part of the new policies for the next succeeding year, in accordance with the limitations of this section. A foreign life insurance corporation, which shall not conduct its business within the limitation and in accordance with the requirements imposed by this section upon domestic corporations, shall not be permitted to do business within this state. (*Amended by L. 1910, ch. 697, L. 1911, ch. 369, L. 1913, ch. 304, and L. 1916, ch. 360, in effect May 1, 1916.*)

§ 97. **Limitation of expenses.**—No domestic life insurance corporation shall in any calendar year, after the year nineteen hundred and six, expend or become liable for, including any and all amounts which any person, firm or corporation is permitted to expend on its behalf or under any agreement with it (1) for commissions on first year's premiums, (2) for compensation, not paid by commission, for services in obtaining new insurance exclusive of salaries paid in good faith for agency supervision either at the home office or at branch offices, (3) for medical examinations and inspections of proposed risks, and (4) for advances to agents, a total amount exceeding in the aggregate (a) the loadings upon the premiums for the first year of insurance received in said calendar year (calculated on the basis of the American experience table of mortality with interest at the rate of three and one-half per centum per annum) and (b) the present values of the assumed mortality gains for the first five years of insurance on policies in force at the end of said calendar year on which the first premium, or instalment thereof, has been received during said calendar year, as ascertained by the select and ultimate method of valuation as provided in section eighty-four of this chapter; and (c) on policies issued

and terminated in said calendar year the full gross premiums received, less the net cost of insurance for the time the insurance was in force, computed by the American experience select and ultimate table, three and one-half per centum. No such corporation shall make or incur any expense or permit any expense to be made or incurred upon its behalf or under any agreement with it, except actual investment expenses (not exceeding one-fourth of one per centum of the mean invested assets) and except taxes and also except outlays exclusively in connection with real estate, in excess of the aggregate amount of the actual loadings upon premiums received in said year calculated according to the standards adopted by the company under section eighty-four of this chapter, and the present values of the assumed mortality gains hereinbefore mentioned. Provided, however, that any such corporation having less than eighty millions of insurance in force, may incur a total expenditure exceeding the limits of expenditure as herein defined by an amount not greater than the following percentages of its loadings for the preceding calendar year, to wit: having at the end of such year less than ten millions, forty per centum; having twenty but less than thirty millions, thirty-five per centum; having thirty but less than forty millions, thirty per centum; having forty but less than fifty millions, twenty-five per centum; having fifty but less than sixty millions, twenty per centum; having sixty but less than seventy millions, fifteen per centum; having seventy but less than seventy-five millions, ten per centum; having seventy-five but less than eighty millions, five per centum. No such corporation, nor any person, firm or corporation on its behalf or under any agreement with it shall pay or allow to any agent, broker or other person, firm or corporation for procuring an application for life insurance, for collecting any premium thereon or for any other service performed in connection therewith any compensation other than that which has been determined in advance. Except as hereinafter provided all bonuses, prizes and rewards, and all increased or additional commissions or compensation of any sort based upon the volume of any new or renewed business or the aggregate of policies written or paid for, are prohibited. Nothing herein contained is to be construed as prohibiting the institution of contests or competitions among agents, and the recognition of success in such competitions by the awarding of ribbon decorations, medals, pins, buttons or other tokens of small intrinsic value, given not as compensation but as a bona fide recognition of merit. No such corporation shall pay commissions upon renewal premiums received upon policies issued after the year nineteen hundred and six, in excess of five per centum of the premium annually for fourteen years after the first year of insurance in the case of endowment policies providing for less than twenty annual premiums, nor in excess of seven and one-half per centum of the premium annually for the first nine years after the first year of insurance and five per centum of the premium annually for the next ensuing five years in the case of other forms of policies; provided that an amount found to be equivalent to the aggregate amount

so payable by a calculation approved by the superintendent of insurance and based upon mortality, interest and lapse rates, may be distributed through three or more years, or through a period exceeding fourteen years, but not more than two-fifths of such amount shall be payable for any one year; provided further that in any agency district subject to the supervision of a local salaried representative the renewal commission payable to agents of such district shall not exceed two-thirds of the foregoing rates annually for fourteen years, subject to the calculation as aforesaid; provided further that any such corporation may condition the allowance or payment in whole or in part of any of the renewal commissions allowed to be paid as aforesaid upon the efficiency of service of the agent receiving the same or upon the amount and quality of the business renewed under his supervision; and also provided that a fee not exceeding three per centum may be paid for the collection of premiums which shall be received for any year after the fifteenth year of insurance. If any such corporation shall compensate its agents, or any of them, after the first insurance year, in whole or in part, upon any other plan than commissions and collection fees, the aggregate sum so paid shall in no year exceed the limitations herein imposed and the schedule and plan of such compensation shall be submitted to and approved by the superintendent of insurance. No such corporation, nor any person, firm or corporation, on its behalf or under any agreement with it, shall make any loan or advance to any person, firm or corporation soliciting or undertaking to solicit applications for insurance without adequate collateral security, nor shall any such loan or advance be made upon the security of renewal commissions, or of other compensation earned or to be earned by the borrower except advances against compensation for the first year of insurance. A foreign life insurance corporation which shall not conduct its business within the limitations and in accordance with the requirements imposed by this section upon domestic corporations shall not be permitted to do business within the state. Any stock corporation which has heretofore issued and represented itself as issuing nonparticipating policies exclusively, and which has changed and become a mutual company, or become a company issuing and representing itself as issuing participating policies exclusively, or any such stock corporation which may hereafter change and become a mutual company, or become a company issuing and representing itself as issuing participating policies exclusively, may incur a total expenditure exceeding the limits of expenditure herein defined by an amount not greater than six per centum of the aggregate net premiums according to the standards adopted by the company as aforesaid. No company transacting business exclusively on the mutual plan shall issue after June thirtieth, nineteen hundred and sixteen, any policy of life or endowment insurance (other than group insurance and reinsurance) upon which the premium loading is less than would enable the company to comply with the provisions of this section limiting total expenses if the premium loading for all its policies

were calculated according to the rule employed by the company for the calculation of the premium loading on such policy. This section shall not apply to expenses made or incurred in the business of industrial insurance nor, except as to the limitation of expenses for the first year of insurance and as to compensation of and loans and advances to agents or solicitors, to stock corporations issuing and representing themselves as issuing nonparticipating policies exclusively. (*Amended by L. 1909, ch. 301, L. 1910, ch. 697, L. 1913, ch. 304, L. 1914, ch. 103, L. 1915, ch. 617, and L. 1916, ch. 120, in effect Apr. 3, 1916.*)

§ 100. **Investments.**—No domestic life insurance corporation, whether incorporated by special act or under a general law, shall invest in or loan upon any shares of stock of any corporation, other than a municipal corporation, nor, excepting government, state or municipal securities, shall it invest in, or loan upon, any bonds or obligations which shall not be secured by adequate collateral security or where more than one-third of the total value of the collateral security therefor shall consist of shares of stock. Every such corporation which on the first day of June, nineteen hundred and six, owned any shares of stock other than public stocks of municipal corporations, whenever the same were acquired, or any bonds or obligations of the kinds above described where said bonds or obligations were acquired after the first day of March, nineteen hundred and six, shall dispose of said shares of stock and of said bonds and obligations within fifteen years from the thirty-first day of December, nineteen hundred and six, and in each year prior to the expiration of said fifteen years shall make such reduction of its holdings of said securities as may be approved in writing by the superintendent of insurance. No investment or loan shall be made by any such life insurance corporation unless the same shall first have been authorized by the board of directors or by a committee thereof charged with the duty of supervising such investment or loan. No such corporation shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, or enter into any transaction for such purchase or sale on account of said corporation jointly with any other person, firm or corporation; nor shall any such corporation enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its board of directors. Any such corporation, in addition to other investments allowed by law, may invest any of its funds in any duly authorized bonds or evidences of debt of any government in which such corporation is transacting business, or of any state, or of any city, county, town, village, school district, municipality or other civil division of any state and may loan upon the security of improved unincumbered real property in any state worth fifty per centum more than the amount loaned thereon. Provided, however, that nothing in this section contained shall be construed as prohibiting a life insurance company from entering into an agreement for the

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purpose of protecting the interests of the company in securities lawfully held by it, or for the purpose of reorganization of a corporation which issued securities so held, and from depositing such securities with a committee or depositaries appointed under such agreement; but such agreement and deposit of securities thereunder must first be approved in writing by the superintendent of insurance with a statement of his reason for such approval. Nor shall this section be construed as preventing such company from accepting corporate stock or bonds or other securities, which may be distributed pursuant to any such agreement approved as aforesaid or to any plan of reorganization approved in writing by the superintendent of insurance with a statement of his reason for such approval. But if any securities so received shall consist in whole or in part of stock in any corporation or of bonds or obligations which shall not be secured by adequate collateral security or where more than one-third of the total value of the collateral security therefor shall consist of shares of stock, then any stock and any such bond or obligation so received shall be disposed of within five years from the time of their acquisition or before the expiration of such further period or periods of time as may be fixed in writing for that purpose by the superintendent of insurance. (*Amended by L. 1911, ch. 767, L. 1913, ch. 596, and L. 1916, ch. 121, in effect Apr. 3, 1916.*)

§ 137. License to agents in accepted cases.

In a suit by a foreign insurance company to compel an agent to account for premiums, it is no defense that plaintiff never procured the certificate to do business in this state required by section 15 of the General Corporation Law. *Factory Fire Ins. Co. v. Whilders* (1915), 92 Misc. 558, 156 N. Y. Supp. 362.

§ 179. Merger.—Any two or more corporations organized under subdivision one of section one hundred and seventy of this chapter, or organized under the laws of this state for the purposes or either of them mentioned in subdivision one of section one hundred and seventy of this chapter; or any one or more corporations organized under subdivision one of section one hundred and seventy of this chapter, or organized under the laws of this state for the purposes or either of them mentioned in subdivision one of section one hundred and seventy of this chapter, and any one or more corporations organized under article five of the banking law or under the laws of this state for the purposes or either of them mentioned in article five of the banking law; or any one or more corporations organized under subdivision one of section one hundred and seventy of this chapter, or organized under the laws of this state for the purposes or either of them mentioned in subdivision one of section one hundred and seventy of this chapter, and any one or more corporations organized under article seven of the banking law or under the laws of this state for the purposes or either of them mentioned in article seven of the banking law, are hereby authorized to merge one or more of said corporations into another in the manner following: The respective boards of directors of such corporations

may enter into and make an agreement under their respective corporate seals for the merger of one or more of said corporations into another of them, prescribing the terms and conditions thereof and the mode of carrying the same into effect, and may provide that such corporations upon and after such merger shall have the name of any one of the corporations merged or any other lawful name to be specified in said agreement, and may name the persons, not less than thirteen nor more than twenty-four, who shall constitute the board of directors of such corporation after its merger, or may provide for a meeting of stockholders within sixty days after the merger to elect a board of directors with such temporary provision for conducting the affairs of the corporation meanwhile as shall be agreed upon; and said directors so named or elected, after qualifying, may divide themselves into classes in manner and with effect as provided in section one hundred and ninety-five of the banking law, and may adopt new by-laws for said corporation. The agreement shall be subject to the approval of the superintendent of insurance, and if either of the parties to the agreement is a corporation organized under article five or under article seven of the banking law, or under the laws of this state, for the purposes or either of them mentioned in article five or in article seven of the banking law, the agreement shall also be subject to the approval of the superintendent of banks. Such agreement shall be submitted to the stockholders of each of such corporations at a meeting thereof to be called upon notice of at least two weeks, specifying the time, place and object thereof, addressed to each stockholder at his last known post office address and deposited in the post office, postage prepaid, and published for at least two successive weeks in one of the newspapers in each of the counties of this state in which either of such corporations shall have its principal place of business, and if such agreement shall be approved at each of such meetings of the respective stockholders separately, by the vote or ballot of the stockholders owning at least two-thirds of the stock, the same shall be the agreement of such corporations. A sworn copy of the proceedings of such meetings, made by the secretaries thereof, respectively, shall be presumptive evidence of the holding and action of such meetings. Such agreement and certified copy of proceedings of such meetings shall be made in duplicate and filed in the office of the superintendent of insurance, and in the office of the clerk of the county in which the principal place of business of the corporation into which such corporation or corporations shall be merged is located; and if one of the parties to such agreement be a corporation organized under article five or under article seven of the banking law or under the laws of this state for the purposes or either of them mentioned in article five or in article seven of the banking law, a third copy thereof shall be filed in the office of the superintendent of banks; and the corporation into which the other, or others, are merged, shall thereafter have the new name, if any, specified in the aforesaid agreement, and the provisions of such agreement shall be carried into effect as therein provided; and it

shall be lawful for said corporation into which the others shall have been merged, to require the return of the original certificate of stock held by each stockholder in each or either of the corporations, and in lieu thereof, to issue new certificates for such number of shares of its own stock as under the agreement of merger the said stockholder may be entitled to receive. If any stockholder not voting in favor of such agreement of merger shall, at such meeting or within twenty days thereafter, object to such merger and demand payment for his stock, he may, at any time within sixty days after such merger, apply to the supreme court at any special term thereof, held in the district in which the county is situated, in which such corporation into which the others may be merged may have its principal place of business, upon at least eight days' notice to said corporation, for the appointment of three persons to appraise the value of his stock, and the court shall appoint such appraisers and designate the time and place of their first meeting, with such directions in regard to their proceedings as shall be deemed proper. The court may fill any vacancies in the board of appraisers occurring by refusal or neglect to hold such office. The appraisers shall meet at the time and place designated and after being duly sworn, shall honestly and faithfully discharge their duties and estimate and certify the value of such stock, and deliver one copy to such corporation and another to such stockholder, if demanded; the charges and expenses of the appraisers shall be paid by the corporation. When the corporation shall have paid the appraised value of such stock, as directed by the court, said stock shall be canceled and such stockholder shall cease to be a member of said corporation or to have any interest in such stock and in the corporate property, and such stock may be held and disposed of by the corporation for its own benefit. Upon the merger of any corporation in the manner herein provided, all and singular the rights, franchises and interests of the said corporation so merged in and to every species of property, real, personal and mixed, and things in action thereunto belonging, shall be deemed and transferred to and vested in such corporation into which it has been merged, without any other deed or transfer; and the said last named corporation shall hold and enjoy the same and all rights of property, franchises and interests in the same manner and to the same extent as if the said corporation so merged had retained the title, and continued to transact the business of such corporation; and the corporation into which merger has been made shall acquire, possess and retain all rights and privileges belonging to either of said corporations at the time of such merger provided that if one of the parties to such agreement be a corporation organized under article seven of the banking law, or under the laws of this state for the purposes or either of them mentioned in article seven of the banking law, the corporation into which merger has been made shall acquire, possess and retain only such rights and privileges to do business belonging to either of said corporations at the time of such merger as may at that time be possessed by the corporation into which they are merged, and

shall be subject only to the supervision of that department of the state government which theretofore had supervision over the corporation into which they are merged. The corporation into which the others shall be merged may increase its capital stock on compliance with the provisions of law in that regard to a sum not exceeding the limit permitted at the time of such merger to either of the corporations so merged; and the title and real estate acquired by such corporation so merged shall not be deemed to revert by means of such merger or anything relating thereto. The rights of creditors of any corporation that shall be so merged shall not in any manner be impaired by any such merger, nor shall any liability or obligation for the payment of any money due or to become due, or any claim, guaranty or demand, in any manner or for any cause existing against such corporation, or against any stockholder thereof, be in any manner released or impaired, and all the rights, obligations and relations of all the parties, creditors, depositors, trustees and beneficiaries of trusts, shall remain unimpaired by the merger; but such corporation into which the others shall be merged shall succeed to such relations, obligations, trusts and liabilities and be held liable to pay and discharge all such debts and liabilities and perform all such trusts of the merged corporation in the same manner as if such corporation into which the other shall become-merged had itself incurred the obligation or liability or assumed the relation or trust, and the stockholders of the respective corporations so entering into such agreement shall continue subject to all the liabilities, claims and demands existing against them as such at or before such merger, and no suit, action or other proceeding then pending before any court or tribunal in which any corporation that may be merged is a party, shall be deemed to have abated or discontinued by reason of any merger, but the same may be prosecuted to final judgment in the same manner as if the said corporation had not entered into the said agreement, or the said last named corporation may be substituted in the place of any corporation so merged as aforesaid by order of the court in which such action, suit or proceeding may be pending. (*Amended by L. 1916, ch. 345, in effect Apr. 27, 1916.*)

§ 190. Dividends.—The board of directors may, from time to time, fix and determine the amount to be paid as a dividend upon policies expiring during each year after retaining sufficient sums to pay all the compensation and other policy obligations which may be payable on account of the injuries sustained and expenses incurred. Such dividend shall not take effect nor be distributed until approved by the superintendent of insurance after such investigation as he may deem necessary. Any such corporation may hold cash assets in excess of its liabilities, but such excess shall be limited to one hundred per centum of its reserves for losses and expenses incurred, and may be used from time to time in payment of losses, dividends and expenses. (*Added by L. 1913, ch. 832, and amended by L. 1916, ch. 393, in effect May 2, 1916.*)

§ 194. **Authorization of foreign mutual insurance corporations.**—After January first, nineteen hundred and seventeen, the superintendent of insurance may, in his discretion, issue a certificate of authority to a mutual corporation organized under the laws of another state to do such insurance in this state; provided that, in no event, shall authority be given to any such mutual corporation to do other kinds of business than those specified in this article. Such corporation shall be required to maintain the same reserves for the protection of members and employees as are required for domestic corporations authorized to transact the same kinds of insurance, and shall at all times have and maintain a surplus over and above all liabilities, including unearned premiums and loss reserves, of not less than one hundred thousand dollars. If any such corporation shall not at all times have and maintain the surplus and reserves hereby required, the superintendent of insurance may, at any time, in his discretion, revoke its certificate of authority to do business in this state. (*Added by L. 1913, ch. 832, and amended by L. 1916, ch. 393, in effect May 2, 1916.*)

§ 204. **Foreign corporations.**—No such corporation, association or society organized under the laws of any other state or territory of the United States or District of Columbia, or foreign countries, except such secret fraternal societies having subordinate lodges or councils as are now authorized to transact business within this state with the consent of the superintendent, shall transact business herein until it has received from the superintendent of insurance a certificate of authority to do business in this state, a duplicate of which shall be filed in his office. The superintendent shall annually issue to such foreign corporation, association or society renewal certificates of authority to continue its business, if its annual report is satisfactory to him, which certificate shall be filed in the office of the clerk of the county where its principal office is located within this state, within sixty days after filing such annual report, and no such foreign corporation, association or society, except secret fraternal societies above specified, shall be authorized to continue such business after the expiration of such sixty days unless such certificate shall have been so received and filed. The superintendent shall refuse a certificate of authority or a renewal of the same to any such foreign corporation, association or society, except such secret fraternal societies, when, in his judgment, such refusal will best promote the public interest, or when, by the laws of the state or territory under which the same is organized, the corporations, associations or societies of this state doing a life or casualty business upon the co-operative or assessment plan are not permitted to transact such business in such other state or territory. Provided, however, that except in the case of fraternal organizations, and except in the case of corporations complying with the conditions required of domestic corporations in procuring certificates for foreign states, as provided in section

two hundred and four-a, of this act, no certificate of authority to do business in this state except renewal certificates of authority to such corporations, associations or societies as were on April twenty-sixth, nineteen hundred and six, authorized to transact business within the state, shall be issued by the superintendent of insurance after June first, nineteen hundred and six. When any other state or territory shall impose any obligation upon such corporation, association or society of this state, or their agents transacting business in such other state or territory, the like obligations are hereby imposed upon similar corporations, associations or societies of such other state or territory and their agents or representatives transacting business in this state, and such corporation, association or society of such other state or territory, and their agents and representatives shall pay all licenses, fees or penalties to, and make deposits with, the state treasurer imposed by the laws of such other state or territory upon any such corporation, association or society of this state doing business therein; and in case of failure to pay the same, the superintendent shall refuse the certificate of authority herein provided for, or cancel such certificate in case one shall have previously been issued. (*Amended by L. 1916, ch. 590, in effect May 18, 1916.*)

§ 204-a. Reciprocal relations.—Whenever the laws or public officers of any foreign state or territory shall require as a condition of or as a prerequisite to the entry of any domestic corporation now doing business under article six of this chapter, into such foreign state or territory, or to the issuance to it of a license to do business therein, that such corporation shall file with any official or department of such foreign state or territory, a certificate in substance or to the effect that corporations of such foreign state or territory conducting a similar business therein, may, upon proper application to the superintendent of insurance of this state and upon complying with the laws of this state in respect thereto, be permitted to enter and carry on business herein, subject to the laws of this state, the superintendent of insurance, upon the application of such domestic corporation shall issue to it one or more such certificates, provided, however, that it shall establish to the satisfaction of the superintendent of insurance that it has had an experience of at least forty years; that its membership is confined and limited to members of one fraternity; that its actual expenses of management shall be limited in any one year to twenty per centum of the cash income actually received by it from premiums, assessments and membership fees; that it is possessed of assets held for the benefit of policy or certificate holders only, either in cash or invested as required in the case of life insurance companies by the laws of this state, or both, at least equal to the aggregate amount of its accrued liabilities and contingent reserve liability, whereof there shall be deposited with the superintendent of insurance the sum of one hundred thousand dollars in the stocks or bonds of the United States or of this state not

estimated above their current market value, or in the bonds of a county or incorporated city in this state authorized to be issued by the legislature, not estimated above their par value nor their current market value, or in bonds and mortgages on improved, unincumbered real property in this state, worth fifty per centum more than the amount loaned thereon. The accrued liabilities and contingent reserve liability to be determined as follows:

1. The amount of all reported death, or other benefit claims then remaining unpaid, including unpaid installments on claims payable in installments;
2. The amount of all accrued liabilities, including assessments or premiums paid in advance for any period beyond that covered by "three" hereunder;
3. An amount equal to the expected claims by the American experience table of mortality to the next succeeding date when a regular assessment or premium payment falls due, the nonpayment of which would cause the insurance under outstanding certificates or policies to cease and determine;
4. In event that the corporation has outstanding any certificates or policies under which any payment, other than a disability benefit, is promised either actually or contingently to be made to a living certificate or policy holder, or under which the term of premium paid is, actually or contingently, less than the entire possible term of the insurance protection, an amount equal to the required reserve for all the benefits promised by such certificates or policies, computed on the net premium basis according to the American experience table of mortality with interest at four per centum per annum;
5. An amount equal to the single year term premium at attained age upon each and every outstanding certificate or policy, not covered by subdivision four, determined by the American experience table of mortality with interest at four per centum per annum, less a credit of the amount of the stipulated or stated net mortuary payment to be made, subject to the laws governing said corporation, during said year by or on account of each such certificate or policy, which credit shall, however, in no event exceed the said single year term premium charged against the individual certificate or policy on account of which such credit is taken;
6. Every such insurance corporation incorporated under the laws of any other state of the United States, and doing business in this state, shall keep on deposit with the superintendent of insurance of this state or with the auditor, comptroller or general fiscal officer of the state by whose laws it is incorporated the same amount and character of securities which are required for deposit in this state of a domestic corporation. The superintendent of insurance shall be furnished with the certificate of such auditor, comptroller or general fiscal officer, under his hand and official seal, that he, as such auditor, comptroller or general fiscal officer of such state, holds in trust and on deposit for the benefit of the policy or certifi-

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Automobile fire insurance.

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cate holders of the corporation such stocks and securities. Such certificate shall embrace the items of the securities so held and shall state that the officer making it is satisfied that the securities are worth the amount required by law. Any foreign corporation permitted or seeking to do business in this state of the character herein described which invests its funds in accordance with the laws of the state in which it is incorporated shall be held to meet the requirements of this article for the investment of funds. (*Added by L. 1916, ch. 590, in effect May 18, 1916.*)

§ 232. Certificates.

Amendments to constitution or by laws affecting benefits.—This section does not change the rule that a fraternal mutual benefit association cannot by an amendment to its constitution or by-laws destroy or diminish benefits which it contracted to give its members when they became such, even though a general power to amend be expressly reserved. *Stewart v. Thorburn* (1916), 171 App. Div. 258, 157 N. Y. Supp. 242.

ARTICLE 10-A.

(Article added by L. 1916, ch. 14, in effect Feb. 21, 1916.)

MUTUAL AUTOMOBILE FIRE INSURANCE CORPORATIONS.

Section 320. Incorporation.

321. Completion of organization.

322. Directors and officers.

323. Meetings; basis of right to vote.

324. Reserves; suspension, cancellation and reinstatement of certificate; expenses.

325. Dividends.

326. Assessments.

327. Reports to and examinations by superintendent of insurance; filing of policy forms.

328. Authorization of foreign mutual automobile fire insurance corporations.

§ 320. Incorporation.—Twenty-five or more persons may become a corporation for the purpose of making insurances on the mutual plan, upon automobiles, whether stationary or being operated under their own power, and wheresoever they may be, against all or any of the hazards of fire, explosion, transportation, collision, loss by legal liability for damage to property resulting from the maintenance and use of automobiles, and loss by burglary or theft or both, including all or any of the risks of lake, river, canal, inland and ocean navigation and transportation, but not including insurance against loss by reason of bodily injury to the person. Such corporation may reinsure any risks taken by it. Incorporation may be effected by making and filing in the office of the superintendent of insurance a declaration signed by each of the incorporators, stating their intention to form a corporation for the purposes named, and setting forth a copy of the charter which they proposed to adopt, which shall state the name of the proposed corporation (which name shall include the word

“mutual”), the place where its principal office is to be located, the mode and manner in which its corporate powers are to be exercised, the number of its directors, a majority of whom shall be citizens of this state, the manner of electing its directors and officers, the time of such elections, the manner of filling vacancies, the names and postoffice addresses of the directors who shall serve until the first annual meeting of such corporation, the period for the commencement and termination of its fiscal year, and such further particulars as shall be necessary to explain and make manifest the objects and purposes of the corporation. Such declaration shall be proved, or acknowledged, and recorded in a book kept for that purpose by the superintendent of insurance, and a certified copy thereof shall be delivered to the persons executing the same. All corporations hereafter organized on the mutual plan for the exclusive purpose of making all or any of the kinds of insurance specified in this section shall be incorporated under this article. (*Added by L. 1916, ch. 14, in effect Feb. 21, 1916.*)

§ 321. **Completion of organization.**—Upon receipt from the superintendent of insurance of a certified copy of the declaration of intention to form a corporation, the persons signing such declaration may open books to receive applications for membership therein. No such corporations shall issue any policies of insurance unless, and until, the persons signing such declaration shall have previously published once a week, for at least two successive weeks, a notice of their intention to form such a corporation in a public newspaper in the county where its principal office is to be located, nor until at least one thousand persons owning not less than fifteen hundred automobiles have agreed to become members of such corporation, and have applied for, and agreed to take insurance therein, covering one or more of the kinds of insurance specified in section three hundred and twenty; nor unless the annual premium cost of the insurance thus agreed to be taken shall be not less than thirty thousand dollars at the rates charged by the company, nor until the facts specified in this section have been certified under oath to the superintendent of insurance by at least three of the persons signing the original certificate and the superintendent of insurance has issued a certificate of authority to such corporation, authorizing it to begin writing the insurance specified in this article; nor until the superintendent of insurance shall be satisfied by an examination of the corporation or otherwise that the applications for membership are bona fide, which applications shall state that the applicants agree to accept and take the policies of insurance referred to therein within a period of three months from the date of the issuance to the corporation by the superintendent of insurance of a certificate of authority to transact the business of insurance specified in this article. If at any time the number of members insured shall fall below one thousand persons, and the number of cars insured falls below fifteen hundred, or if at any

time the premium cost of the insurance as above determined, falls below thirty thousand dollars, no further policies shall be issued by the corporation until other persons, who, together with existing members, amount to not less than one thousand persons, insuring not less than fifteen hundred cars, have made bona fide applications for insurance in the corporation, and until the premium cost of the insurance, as above determined shall be not less than thirty thousand dollars. In the event that such applications for insurance shall not be obtained within a reasonable time, to be fixed by the superintendent of insurance, such superintendent may take the proceedings for the liquidation of such corporation under section sixty-three of this chapter.

The members of the corporation shall be policy-holders therein, and when any member shall cease to be a policy-holder, he shall cease at the same time, to be a member of the corporation. A corporation, partnership, association or joint stock company may become a member of such insurance corporation, and may authorize any person to represent it in such insurance corporation, and such representative shall have all the rights of any individual member; but neither the representative nor the said corporation, partnership, association or joint stock company shall be subject to any greater liability than as if an individual member.

Such corporation may borrow money, or assume liability in a sum sufficient to defray the reasonable expenses of its organization. (*Added by L. 1916, ch. 14, in effect Feb. 21, 1916.*)

§ 322. Directors and officers.—Any such corporation shall have not less than thirteen directors, and such officers as shall be provided for in the certificate of incorporation or in the by-laws. By-laws may be adopted at a meeting of the directors of the corporation held after the receipt from the superintendent of insurance of a certified copy of the certificate of incorporation, and prior to the first annual meeting, provided the said by-laws shall have first been approved by the superintendent of insurance. Thereafter, by-laws may be made or amended only by the members; provided that such by-laws or amendments shall have first been approved by the superintendent of insurance. The directors shall be elected at the annual meetings of members; but at any time after the first annual meeting the directors may be divided by the board into groups, and thereafter one group only elected at each annual meeting, in a manner to be provided by the by-laws. All except four of the directors of the corporation elected after the organization of the corporation is completed, and it is authorized to begin to issue insurance policies, must be members of the corporation. All of the officers, excepting assistant secretaries and assistant treasurers and the actuary, must be members of the board of directors. (*Added by L. 1916, ch. 14, in effect Feb. 21, 1916.*)

§ 323. Meetings; basis of right to vote.—At all meetings of the members of the corporation, each member shall have one vote for each automo-

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bile owned and insured by him in the corporation, provided that no member shall have more than three votes. (*Added by L. 1916, ch. 14, in effect Feb. 21, 1916.*)

§ 324. **Reserves, suspension; cancellation and reinstatement of certificate; expenses.**—Such corporation shall be required to maintain the same reserves for the protection of policyholders, and others who may have a right of action directly against such corporation, as are required to be maintained by stock insurance corporations in relation to the same class of insurance. The superintendent of insurance may suspend or cancel the certificate issued by him, authorizing such corporation to transact such insurance business, at any time, when the assets of such corporation are insufficient to insure and secure the payment of its policy and other obligations; and the superintendent of insurance may reinstate, or renew, said certificate whenever, by assessment, or otherwise, said assets have been increased to a sum sufficient to insure and secure the payment of the policy and other obligations of such corporation. The expenses of management of such corporation shall not exceed in any one calendar year thirty per centum of its premium income in such year, but the expenses of management shall not be held to include expenses incurred in the investigation, adjustment and settlement of claims. (*Added by L. 1916, ch. 14, in effect Feb. 21, 1916.*)

§ 325. **Dividends.**—The board of directors may from time to time fix and determine, subject to the approval of the superintendent of insurance, the amount to be declared and paid as a dividend, after retaining sufficient sums to pay all outstanding policy and other obligations. (*Added by L. 1916, ch. 14, in effect Feb. 21, 1916.*)

§ 326. **Assessments.**—The corporation shall in its by-laws and policies fix the contingent mutual liability of the members for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a member shall not be less than an amount equal to twice the amount of, and in addition to the cash premium written in the policy. If the corporation is not possessed of cash funds above its unearned premiums sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the members liable to assessment therefor, in proportion to their several liability. Every member shall be liable to pay and shall pay his proportionate part of any assessment which may be laid by the corporation in accordance with law and his contract, on account of losses and expenses incurred while he was a member if he is notified of such assessment within one year after the expiration of his policy. All proposed premium assessments shall be filed in the insurance department and shall not take effect until approved by the superintendent of insurance, after such investigation as he may deem necessary. All funds of the

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corporation and the contingent liability of the members thereof, shall be available for the payment of any liability of the corporation. (*Added by L. 1916, ch. 14, in effect Feb. 21, 1916.*)

§ 327. **Reports to and examinations by superintendent of insurance; filing of policy forms.**—Every such corporation shall make reports to the superintendent of insurance at the same times and in the same manner as are required from stock insurance companies transacting the same kind of business, and the superintendent of insurance may examine into the affairs of such corporation at any time, either personally or by any duly authorized examiner appointed by him, and the superintendent of insurance must make such an examination into the affairs of said corporation at least once in every two years.

No such corporation shall issue any policy of insurance until a copy of the form thereof has been filed with the superintendent of insurance. (*Added by L. 1916, ch. 14, in effect Feb. 21, 1916.*)

§ 328. **Authorization of foreign mutual automobile fire insurance corporations.**—After January first, nineteen hundred and nineteen, the superintendent of insurance may issue a certificate of authority to a mutual automobile fire insurance corporation organized under the laws of any other state or country, to do such insurance business in this state provided that every such foreign mutual corporation shall have the qualifications required of a domestic corporation organized under this article, and provided further, that in no event, shall authority be given to any such foreign mutual corporation organized to do other kinds of insurances than those specified in this article. Such corporation shall be subject to all the provisions of law applicable to corporations organized under this article. (*Added by L. 1916, ch. 14, in effect Feb. 21, 1916.*)

ARTICLE 10-B.

(Article added by L. 1916, ch. 13 in effect Feb. 21 1916.)

MUTUAL AUTOMOBILE CASUALTY INSURANCE CORPORATIONS.

Section 340. Incorporation.

341. Completion of organization.

342. Directors and officers.

343. Meetings; basis of right to vote.

344. Reserves; suspension; cancellation and reinstatement of certificates; expenses.

345. Dividends.

346. Assessments.

347. Reports to and examinations by superintendent of insurance; filing of policy forms.

348. Authorization of foreign mutual automobile casualty insurance corporations.

§ 340. **Incorporation.**—Twenty-five or more persons may become a cor-

poration for the purpose of making insurances on the mutual plan upon or pertaining to automobiles, whether stationary or being operated under their own power, and wheresoever they may be, as follows:

(a) Against loss or damage resulting from accident to, or injury suffered by, any person, and for which the person insured is liable;

(b) Against loss by burglary or theft or both of such hazards;

(c) Against loss or damage to automobiles (except loss or damage by fire or while being transported in any conveyance by land or water), including loss by legal liability for damage to property resulting from the maintenance and use of automobiles; by making and filing in the office of the superintendent of insurance a certificate to be signed by each of the incorporators, stating their intention to form a corporation for the purposes named, and setting forth a copy of the charter which they propose to adopt, which shall state the name of the proposed corporation (which name shall include the word "mutual"), the place where it is to be located, the mode and manner in which its corporate powers are to be exercised, the number of its directors, a majority of whom shall be citizens and residents of this state, the manner of electing its directors and officers, the time of such elections, the manner of filling vacancies, the names and post-office addresses of the directors who shall serve until the first annual meeting of such corporation, and such further particulars as shall be necessary to explain and make manifest the objects and purposes of the corporation. Such certificate shall be proved or acknowledged, and recorded in a book kept for the purpose by the superintendent of insurance, and a certified copy thereof shall be delivered to the persons executing the same. Such corporation shall have power to reinsure any risks taken by it. All corporations hereafter organized on the mutual plan for the exclusive purpose of making all or any of the kinds of insurance specified in this section shall be incorporated under this article. (*Added by L. 1916, ch. 13, in effect Feb. 21, 1916.*)

§ 341. **Completion of organization.**—Upon receipt of a certified copy of the certificate of incorporation from the superintendent of insurance, the persons signing such certificate may open books to receive applications for membership therein. No such corporation shall issue any policies of insurance unless, and until, the persons signing such certificate shall have published notice of their intention to form such corporation in a public newspaper in the county where its principal office is to be located, once a week for two successive weeks; nor until at least one thousand persons owning not less than fifteen hundred automobiles have agreed to become members of such corporation, and have applied for, and agreed to take, insurance therein, covering one or more of the kinds of insurance specified in section three hundred and forty; nor unless the annual premium cost of the insurance thus agreed to be taken shall be not less than fifty thousand dollars at the rates charged by the company, nor until the facts specified

in this section have been certified under oath to the superintendent of insurance by at least three of the persons signing the original certificate and the superintendent of insurance has issued a certificate of authority to such corporation, authorizing it to begin writing the insurance specified in this article; nor until the superintendent of insurance shall be satisfied by an examination of the corporation or otherwise that the applications for membership are bona fide, which applications shall state that the applicants agree to accept and take the policies of insurance referred to therein within a period of three months from the date of the issuance to the corporation by the superintendent of insurance of a certificate of authority to transact the business of insurance specified in this article. If at any time the number of members insured falls below one thousand and the number of cars insured falls below fifteen hundred, or if at any time the premium cost of the insurance as above determined, falls below fifty thousand dollars, no further policies shall be issued by the corporation until other persons, who, together with the existing members, amount to not less than one thousand persons, insuring not less than fifteen hundred cars, have made bona fide applications for insurance in the corporation; and until the premium cost of the insurance, as above determined, shall be not less than fifty thousand dollars. In the event that such applications for insurance shall not be obtained within a reasonable time, to be fixed by the superintendent of insurance, such superintendent may take the proceedings for the liquidation of such corporation under section sixty-three of this chapter.

The members of the corporation shall be policyholders therein, and when any member shall cease to be a policyholder, he shall cease at the same time to be a member of the corporation. A corporation, partnership, association or joint stock company, may become a member of such insurance corporation, and may authorize any person to represent it in such insurance corporation, and such representative shall have all the rights of any individual member; but neither the representative nor the said corporation, partnership, association or joint stock company shall be subject to any greater liability than as if an individual member.

Such corporation may borrow money, or assume liability, in a sum sufficient to defray the reasonable expenses of its organization. (*Added by L. 1916, ch. 13, in effect Feb. 21, 1916.*)

§ 342. **Directors and officers.**—Any such corporation shall have not less than thirteen directors, and such officers as shall be provided for in the certificate of incorporation or in the by-laws. By-laws may be adopted at a meeting of the directors of the corporation held after the receipt from the superintendent of insurance of a certified copy of the certificate of incorporation, and prior to the first annual meeting, provided the said by-laws shall have first been approved by the superintendent of insurance. Thereafter, by-laws may be made or amended only by the members; pro-

vided that such by-laws or such amendments shall have first been approved by the superintendent of insurance. The directors shall be elected at the annual meetings of members; but at any time after the first annual meeting the directors may be divided by the board, into groups, and thereafter one group only elected at each annual meeting, in a manner to be provided by the by-laws. All except four of the directors of the corporation elected after the organization of the corporation is completed, and it is authorized to begin to issue insurance policies, must be members of the corporation. All of the officers, excepting assistant secretaries and assistant treasurers and the actuary, must be members of the board of directors. (*Added by L. 1916, ch. 13, in effect Feb. 21, 1916.*)

§ 343. **Meetings; basis of right to vote.**—At all meetings of the members of the corporation, each member shall have one vote for each automobile owned and insured by him in the corporation, provided that no member shall have more than three votes. (*Added by L. 1916, ch. 13, in effect Feb. 21, 1916.*)

§ 344. **Reserves; suspension; cancellation and reinstatement of certificates; expenses.**—Such corporation shall be required to maintain the same reserves for the protection of policyholders and others who may have a right of action directly against such corporation, as are required to be maintained by stock insurance corporations in relation to the same class of insurance. The superintendent of insurance may suspend or cancel the certificate issued by him, authorizing such corporation to transact such insurance business, at any time when the assets of such corporation are insufficient to insure and secure the payment of its policy and other obligations; and he may reinstate or renew said certificate whenever by assessment or otherwise said assets have been increased to a sum sufficient to insure and secure the payment of the policy and other obligations of such corporation. The expenses of management of any such corporation shall not exceed in any one calendar year thirty per centum of its premium income in such year, but the expenses of management shall not be held to include expenses incurred in the investigation, adjustment and settlement of claims. (*Added by L. 1912, ch. 13, in effect Feb. 21, 1916.*)

§ 345. **Dividends.**—The board of directors may from time to time fix and determine, subject to the approval of the superintendent of insurance, the amount to be declared and paid as a dividend, after retaining sufficient sums to pay all outstanding policy and other obligations. (*Added by L. 1912, ch. 13, in effect Feb. 21, 1916.*)

§ 346. **Assessments.**—The corporation shall in its by-laws and policies fix the contingent mutual liability of the members for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a member shall not be less than an amount equal to twice the amount of, and in addition to, the cash premium written in the

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policy. If the corporation is not possessed of cash funds above its unearned premium sufficient for the payment of the incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the members liable to assessment therefor, in proportion to their several liability. Every member shall be liable to pay and shall pay his proportionate part of any assessment which may be laid by the corporation in accordance with law and his contract, on account of losses and expenses incurred while he was a member, if he is notified of such assessment within one year after the expiration of his policy. All proposed premium assessments shall be filed in the insurance department and shall not take effect until approved by the superintendent of insurance, after such investigation as he may deem necessary. All funds of the corporation and the contingent liability of the members thereof shall be available for the payment of any liability of the corporation. (*Added by L. 1912, ch. 13, in effect Feb. 21, 1916.*)

§ 347. Reports to and examinations by superintendent of insurance; filing of policy forms.—Every such corporation shall make reports to the superintendent of insurance at the same time and in the same manner as are required from stock insurance companies transacting the same kind of business, and the superintendent of insurance may examine into the affairs of such corporation at any time, either personally or by any duly authorized examiner appointed by him, and the superintendent of insurance must make such an examination into the affairs of said corporation at least once in every two years.

No such corporation shall issue any policy of insurance until a copy of the form thereof has been filed with the superintendent of insurance. (*Added by L. 1912, ch. 13, in effect Feb. 21, 1916.*)

§ 348. Authorization of foreign mutual automobile casualty insurance corporations.—After January one, nineteen hundred and nineteen, the superintendent of insurance may issue a certificate of authority to a mutual automobile casualty insurance corporation organized under the laws of any other state or country, to do such insurance business in this state provided that every such foreign mutual corporation shall have the qualifications required of a domestic corporation organized under this article and provided further, that in no event shall authority be given to any such foreign mutual corporation organized to do other kinds of insurances than those specified in this article. Such corporation shall be subject to all the provisions of law applicable to corporations organized under this article. (*Added by L. 1912, ch. 13, in effect Feb. 21, 1916.*)

INTERSTATE BRIDGE COMMISSION.

Creation and powers; State boards and commissions L., §§ 55-63.

JEFFERSON COUNTY.

Office of coroner abolished, see Coroners.

JOINT STOCK ASSOCIATION LAW.

(L. 1909, ch. 34.)

§ 2. Definitions.

Authority to sue and be sued.—*Roberts v. Anderson* (1915), 226 Fed. 7.

§ 3. Contents of articles of association.

At common law, and without statutory authority, persons may associate themselves together in a joint stock company, with transferable shares. *Roberts v. Anderson* (1915), 226 Fed. 7.

JUDGMENT.

Code of Civil Procedure.

§ 1671-a.—In an action or proceeding specified in articles second, third or fourth of this title, all the proceedings and the judgment shall bind, in addition to the persons who are bound pursuant to the provisions of section sixteen hundred and seventy, all persons who acquire inchoate dower in the real property described in the notice of pendency of the action after the filing of such notice and also all persons born between the filing of such notice of pendency of action and the entry of judgments in such action who would have been bound by such proceedings if borne * after such judgment; provided the court may in its discretion at any time before final judgment allow any such person to intervene or may require that he be brought in as party, or may make such other order or provision for the protection or recognition of his rights as justice may require and the circumstances of the case permit. In admitting such new party or requiring such new party to be brought in the court may give or refuse leave to answer; may permit or direct that the answer of any other defendant or defendants stand as his answer; may direct that the action retain its place on the calendar; may require or dispense with the appointment of guardian ad litem; may allow a new trial or any re-hearing; or direct that all or any part of the proceedings stand and bind such new party or make or impose any other provision, term or condition that to the court may seem proper. (*Added by L. 1916, ch. 518, in effect Sept. 1, 1916.*)

* So in original.

JUDICIARY LAW.

(L. 1909, ch. 35.)

§ 26. Additional compensation allowed judges in Kings, Queens and Richmond counties.

The surrogate of the county of Queens is not entitled to compensation for the drawing of jurors under this section providing for compensation "to each judge, including each justice of the Supreme Court, for the services performed by him in connection with the drawing of jurors," notwithstanding the provisions of the Code of Civil Procedure for the drawing of jurors for service in the Surrogate's Court. *People ex rel. Noble v. Mitchel* (1915), 170 App. Div. 379, 155 N. Y. Supp. 660.

§ 88. Admission to and removal from practice by appellate division.

Court of Appeals, jurisdiction.—Questions relating to the comparative weight of evidence or the fairness of the sentence in a proceeding to discipline an attorney are beyond the jurisdiction of the Court of Appeals. *Matter of Harris* (1916), 217 N. Y.

Attorney at law disbarred for extorting from a client who was in financial straits exorbitant and unconscionable fees for legal services and also for fleeing the jurisdiction to avoid the enforcement of an order of the court directing him to pay over moneys to the client. *Matter of Cohen* (1915), 169 App. Div. 544, 155 N. Y. Supp. 517; for converting to his own use moneys paid to him by a client for the purpose of settling an action and for embezzling other moneys received in a professional capacity. *Matter of Harris* (1915), 169 App. Div. 525, 155 N. Y. Supp. 450; for converting to his own use money held by him as a receiver in bankruptcy, for making false affidavits as to the balance of money in his hands as receiver and for converting moneys collected for clients. *Matter of Lichtenberg* (1915), 169 App. Div. 505, 155 N. Y. Supp. 482; for converting to his own use moneys intrusted to him by his client for the purpose of investment. *Matter of Hayes* (1915), 169 App. Div. 516, 155 N. Y. Supp. 457; for conspiring with another person to obtain moneys by the institution of groundless actions amounting to blackmail. *Matter of Lenney* (1915), 169 App. Div. 509, 155 N. Y. Supp. 473; for converting to his own use moneys of a client intrusted to him for investment, and by a fictitious payment of interest inducing her to believe that he had loaned the money for her on a mortgage. *Matter of Vanderpool* (1915), 169 App. Div. 499, 155 N. Y. Supp. 467; for converting to his own use moneys intrusted to him by a client for safekeeping. *Matter of Ayler* (1915), 169 App. Div. 494, 155 N. Y. Supp. 489; for converting to his own use money received from a client for the purpose of procuring bail and payment of incidental expenses, and also for converting money obtained from a friend of the client as a counsel fee. *Matter of Westcott* (1915), 170 App. Div. 541, 156 N. Y. Supp. 504; for presenting to the court, on several occasions, an affidavit signed by him and known by him to be false for the purpose of obtaining an extension of time within which to serve a case on appeal. *Matter of Cebulsky* (1915), 169 App. Div. 636, 155 N. Y. Supp. 463; for settling a judgment in favor of his client without authority and against express directions, for converting to his own use the moneys received on such settlement and for giving false testimony in disbarment proceedings. *Matter of Simpkins* (1915), 169 App. Div. 632, 155 N. Y. Supp. 521; for procuring or conniving in the payment of money to a witness to

induce him to remain without the State so that he could not be subpoenaed to appear against his client on behalf of the People. *Matter of Rouss* (1915), 169 App. Div. 629, 155 N. Y. Supp. 557; for failing to pay over moneys intrusted to him by a client for the purpose of paying alimony and for converting the same to his own use, and also because he concealed from the law examiners at the time he was admitted to the bar the fact that he had been convicted of a crime and confined pursuant to a sentence. *Matter of Osgoodby* (1915), 169 App. Div. 626, 155 N. Y. Supp. 465; because, having been retained to prosecute an action for divorce and being unable to obtain evidence against the defendant, he employed a woman to seduce the defendant to commit adultery and thereafter verified a complaint alleging that the correspondent was not yet identified, and because he permitted his client at trial to swear that the adultery was committed without her consent, connivance, privity or procurement, etc. *Matter of Forrester* (1915), 169 App. Div. 619, 155 N. Y. Supp. 420.

Attorney at law suspended from practice for advertising that he made matrimonial actions a specialty, contrary to section 120 of the Penal Law. *Matter of Neuman* (1915), 169 App. Div. 638, 155 N. Y. Supp. 428; for failing for two months to turn over to a client moneys received by him in settlement of a claim for personal injuries. *Matter of Levor* (1915), 169 App. Div. 642, 155 N. Y. Supp. 426; for one year for making false affidavits used in legal proceedings, for moving for an extra allowance upon an affidavit grossly overstating the value of certain property, and also for presenting a sham issue to the court on a submission of controversy. *Matter of Harris* (1915), 169 App. Div. 644, 155 N. Y. Supp. 283; for two years for failing to pay over moneys collected for a client until compelled to do so by legal proceedings, in which the court stated that it is a serious offense for an attorney to deal with his client's money as if it were his own or to subject it to any risk of loss whatever. *Matter of Evans* (1915), 169 App. Div. 502, 155 N. Y. Supp. 491; for two years for deception as to the intention of his clients in relation to a proceeding for leave to sell an infant's real estate and also for inducing his client to believe that a third person was entitled to a commission for procuring a loan which could easily have been procured by the attorney personally. *Matter of O'Brien* (1915), 169 App. Div. 519, 155 N. Y. Supp. 552; for one year for stopping payment on a check given by him for the payment of costs and disbursements of other attorneys for searching title to lands, the check having been given in order to induce the making of a loan to his clients. *Matter of Kalisky* (1915), 169 App. Div. 531, 155 N. Y. Supp. 550; for two years because having been asked by a city magistrate whether bail offered by his client in a criminal case was good bail, stated that it was good, when as a matter of fact the value of the property offered as security was grossly overstated. *Matter of Sachs* (1915), 169 App. Div. 622, 155 N. Y. Supp. 461.

Attorney disciplined for improper practice in conducting a collection agency. *Matter of ———* (1915), 170 App. Div. 922.

Attorney at law severely censured for writing a letter to a justice of the Municipal Court, in relation to an action against him, personally, in said court, impugning the motives of the justice, charging him with improper judicial action and containing reflections upon other justices of the court. *Matter of Carrao* (1915), 170 App. Div. 545, 155 N. Y. Supp. 379; for preparing and causing his client to verify an answer when he knew or had reason to believe that the material allegations of the complaint denied therein were in fact true. *Matter of Schreiber* (1915), 170 App. Div. 543, 155 N. Y. Supp. 398; for depositing moneys received in settlement of a client's claim in his own account, for using the proceeds, and for delay in paying over to his clients. *Matter of Cohen* (1915), 169 App. Div. 492, 155 N. Y. Supp. 459; for soliciting by false representations a retainer from the client of another attorney by whom he had formerly been employed as clerk, and for settling a judg-

L. 1916, ch. 377. Appellate term, 2nd department; stenographers, etc. § 104a.

ment without taking steps to safeguard his former employer's lien. *Matter of Glasberg* (1915), 169 App. Div. 496, 155 N. Y. Supp. 437; for endeavoring to obtain employment in his professional capacity by means of false representations. *Matter of Lauterbach* (1915), 169 App. Div. 534, 155 N. Y. Supp. 478; for returning to a fraternal benefit society a portion of moneys paid in settlement of his client's claim, so as to enable the association to gain credit by a false appearance of liberality, the claim having actually been settled for a smaller amount, and also for refusing to disclose the facts to the court when called upon to do so. *Matter of Burnstine* (1915), 169 App. Div. 540, 155 N. Y. Supp. 500; for lack of frankness to court on trial of action. *Matter of Tepper* (1915), 170 App. Div. 889; censured and also suspended from practice for procuring a portion of the savings of a former client, a poor woman, ignorant of business affairs, in order that he might acquire for himself an interest in a mining venture. *Matter of Coleman* (1915), 170 App. Div. 537, 156 N. Y. Supp. 487; disciplined by severe censure because, though acting with commendable motives, he wrote a letter containing false statements designed to protect a friend against whom a criminal charge had been made, and because he signed the jurat to an affidavit of a person who did not appear before him but swore to the affidavit over the telephone, said affidavit not being intended for use in judicial proceedings. *Matter of Napolis* (1915), 169 App. Div. 469, 155 N. Y. Supp. 416.

Specific contractual relations of attorney and client are not always necessary to create professional obligations for which a lawyer may be held to account. *Matter of Coleman* (1915), 170 App. Div. 537, 156 N. Y. Supp. 487.

Admission of an attorney at law to the bar revoked because he was guilty of fraud and deceit in the proceeding by which he was admitted in that he filed affidavits stating that he had served a regular clerkship in the office of a practicing attorney for a certain period, when, as a matter of fact, during said period he was employed by other persons in commercial business and only reported at the attorney's office for a brief period each day. *Matter of Moskovitz* (1915), 169 App. Div. 527, 155 N. Y. Supp. 485.

Departure from jurisdiction.—While the court may not punish an attorney for failure to pay over moneys where it is due to inability rather than contumacy, it is a serious offense to flee the jurisdiction for the purpose of rendering the court powerless to enforce its order. *Matter of Cohen* (1915), 169 App. Div. 544, 155 N. Y. Supp. 517.

§ 104-a. Clerks, stenographers and attendants of appellate term in second department.—The justices of the appellate division of the supreme court in the second department, or a majority of them, are authorized to appoint in their discretion, and to remove at pleasure, for the appellate term of the supreme court in the second department, a chief clerk, one deputy clerk, one confidential clerk and stenographer, one confidential opinion stenographer and not to exceed three attendants, and from time to time to fix their salaries or compensation, which shall not exceed for the chief clerk four thousand dollars per annum, for the deputy clerk three thousand five hundred dollars per annum, for the confidential clerk and stenographer three thousand dollars per annum, for the confidential opinion stenographer three thousand dollars per annum and for the attendants the salaries now allowed by law to attendants in the supreme court in Kings county; and the board of estimate and apportionment of the city of New York is authorized and empowered to provide the means to pay such salaries

§§ 115, 116.

Official referees.

L. 1916, ch. 262.

or compensation, and all other expenses of such appellate term; provided, however, that the present chief clerk, deputy clerk, confidential clerk and stenographer, and attendants of such appellate term shall be continued in office until their respective terms shall expire. (*Added by L. 1915, ch. 182, and amended by L. 1916, ch. 377, in effect May 1, 1916.*)

§ 115. **Appointment of official referees in first, second, third and fourth judicial departments.**—The appellate divisions of the supreme court in the first, second, third and fourth departments may from time to time appoint any former judge of the court of common pleas and justices of the supreme court, who shall have served as such judge and justice for eight years or more in the first judicial district, and who after such service was retired before the expiration of his term because he had arrived at the age of seventy years, and any former judge of the court of common pleas and justice of the supreme court who shall have served as such judge and justice for twenty-eight years or more in the first judicial district and who has attained the age of seventy years, and any justice or justices or any former justice or justices of the supreme court in the first judicial department of the judicial districts situated in the second, third and fourth judicial departments who shall have served as a judge or justice of a court of record for fourteen years or more, and who after such service shall in his sixty-fifth year or thereafter have retired or who shall hereafter retire from his or their said office, by expiration of term or resignation or because he or they shall have arrived at the age of seventy years, or who has served not less than twenty-five years in a court of record, of which fourteen years thereof at least shall have been served in the supreme court, as official referee or referees, for the term of his or their life. To any of such official referees may be referred any action, matter or proceeding pending in said supreme court, referable by statute or the rules and practice of said court, in which the justice making the order of reference shall deem that for any reason the expense of such reference should not be borne by the parties to such action, matter or proceeding. (*Amended by L. 1911, ch. 844, L. 1912, chs. 62, 323, and L. 1916, ch. 262, in effect Apr. 21, 1916.*)

§ 116. **Compensation of official referees in the first, second, third and fourth judicial departments.**—The county of New York in the case of official referees appointed by the appellate division of the supreme court in the first judicial department, and the comptroller of the state of New York, in the case of official referees appointed by the appellate division of the supreme court in the second judicial department, shall pay annually to each of the official referees appointed pursuant to section one hundred and fifteen of this chapter a sum equal to the annual compensation now paid to such official referee or referees by the said county of New York, and two-thirds of that amount to each official referee so appointed in the third and fourth judicial departments, and said referee or referees shall not charge or receive from the parties to the action, matter or proceeding referred

L. 1916, ch. 344. Clerks and stenographers in certain districts.

§§ 160, 161.

any fee or compensation for any service rendered as such referee, but may charge the said parties with any disbursements actually incurred by him or them in the performance of his or their duties as such referee, provided the same be allowed by the court. If the services of a stenographer should be required in the action, matter or proceeding so referred to such official referee, such stenographer shall be selected by said referee from the official stenographers of the supreme court, and the parties to the action, matter or proceeding shall not be required to pay any of the fees of such stenographer for taking the testimony or furnishing one copy thereof to the referee. To provide the money necessary to pay the salaries of said official referees appointed by the appellate divisions of the supreme court in the second, third and fourth judicial departments, the comptroller of the state shall annually apportion a sum equal to the total amount of said salaries among the counties composing the second, third and fourth judicial departments, respectively, and cause the same to be levied and collected on the real and personal property in said counties in the same manner in which state taxes are levied and collected. (*Amended by L. 1911, ch. 844, L. 1912, ch. 323, and L. 1916, ch. 262, in effect Apr. 21, 1916.*)

Stenographers' fees, when to be paid by county. City Tax Lien Co. v. Murray (1915), 91 Misc. 119, 154 N. Y. Supp. 300.

§ 160. Appointment of clerks in certain judicial districts.—*Subd. 1, as amended by L. 1911, ch. 404, amended by L. 1916, ch. 117, in effect Apr. 1, 1916, as follows:*

1. Each of the justices of the supreme court in the first judicial district, other than those provided for in section one hundred and three of this chapter, shall appoint and at pleasure remove a clerk to such justice.

Should a justice die or cease to hold office, the clerk thus appointed by him shall continue in office until an appointment shall be made under this subdivision by the justice elected or appointed to fill such vacancy.

The said justices, or a majority of them, shall until the appointment or election of such succeeding justice, regulate the assignment and fix the duties of such clerk thus continued in office.

§ 161. Appointment of stenographers in certain judicial districts.—*Subd. 7, as amended by L. 1910, ch. 60, amended by L. 1916, ch. 344, in effect Apr. 27, 1916, as follows:*

7. The justices of the supreme court for the eighth judicial district shall appoint, and may at pleasure remove, eleven stenographers of the supreme court for such district.

Subd. 8, amended by L. 1916, ch. 128, in effect Apr. 5, 1916, as follows:

8. The justices of the supreme court for the ninth judicial district, or a majority of them, may appoint the stenographers of said court, the number of said stenographers not to exceed the number of all the justices in said district.

§§ 319, 347, 474.

Attendants of appellate division.

L. 1916, ch. 427.

The present stenographers of the supreme court for such district, and those who may hereafter be appointed, shall hold office until removed by the said justices.

§ 319. Compensation of stenographers of county courts.—*Subd. 7 amended by L. 1916, ch. 573, in effect May 16, 1916, as follows:*

7. The stenographer of the county court of Oneida county shall receive a salary of not less than two thousand five hundred dollars per annum, together with his necessary expenses for stationery to be paid by the treasurer of the said county of Oneida in equal monthly installments on the certificate of the said county judge of Oneida county that the services have been actually performed or the expenses necessarily incurred.

§ 347. Compensation of attendants of appellate division in third and fourth departments.—Each of the attendants appointed by the justices of the appellate division of the third department shall receive a compensation to be fixed by the justices, not exceeding eighteen hundred dollars a year payable monthly, but the compensation of all such attendants shall not exceed in the aggregate forty-three hundred dollars. Each of the attendants appointed by the justices of the appellate division of the fourth department shall receive a compensation of eighteen hundred dollars per year payable monthly. Such attendants shall also be entitled to receive their traveling expenses to and from their homes to the place where said sessions are held, not exceeding once in each term. The compensation of the attendants shall be paid by the comptroller of the state upon the certificate of the presiding justice of the department. (*Amended by L. 1910, ch. 304, L. 1912, ch. 376, L. 1915, ch. 242, and L. 1916, ch. 427, in effect May 4, 1916.*)

§ 474. Compensation of attorney or counsellor.

An attorney is in duty bound to give his client whole-hearted service; not only may he do nothing adverse to his client but he may accept no retainer to do anything which might be adverse to his client's interests. Public policy absolutely demands that the foundation of all rules fixing the proper relation of attorneys to clients be not weakened, and an attorney will not be permitted to profit by a retainer which involves in any degree a disregard of such foundation. *Loew v. Gillespie* (1915), 90 Misc. 616, 153 N. Y. Supp. 830.

An alleged contract made between attorney and client at the close of a trial when the relation had existed for a long time and was still in force will, in view of the confidential relations between the parties, be carefully scrutinized by the courts in determining its validity and conclusiveness. It is incumbent upon the attorney to show that the provisions are fair and reasonable and were fully known and understood by the client. *Matter of Howell* (1915), 215 N. Y. 466, revg. 166 App. Div. 894.

Retainer by law clerk not enforceable.—While plaintiff was employed as a law clerk in the department of finance of the city of New York he advised certain employees of the board of education that they had a good cause of action against said board upon their claims for higher salary, and obtained their retainers for the purpose of bringing actions. Held, that such retainers were directly adverse to the

interests of the city, plaintiff's employer, and incompatible with the obligations of the trust he owed to it, as in obtaining such retainers plaintiff acted without proper regard to his duties as law clerk, and no recovery for services as attorney based upon such retainers can be sustained. *Loew v. Gillespie* (1915), 90 Misc. 616, 153 N. Y. Supp. 830.

Conflicting interests.—It is not always improper or unlawful for an attorney at law to represent conflicting interests. Adverse interests, if they are to be adjusted, may be represented by the same counsel, though the cases in which this can be done are exceptional, and never entirely free from danger of conflicting duties. *Elsemann v. Hazard* (1916), 218 N. Y. 155.

Abandonment or settlement by client; effect upon attorney's right to compensation.—An attorney in accepting a retainer must, on grounds of public policy, take the chance of his client abandoning or settling the litigation in which event the attorney can only recover the reasonable value of services actually rendered, but so long as he is faithful to his trust he does not assume the risk of his client discharging him at will and then paying him only for services rendered up to the time of his discharge. *Friedman v. Mindlin* (1915), 91 Misc. 473, 155 N. Y. Supp. 295.

Effect of change of attorney.—In an action to recover for personal injuries plaintiff agreed to pay his attorney for services a sum equal to one-half of any amount that might be recovered or paid, whether by way of verdict, judgment, settlement or otherwise, but refused to execute the papers necessary to consummate a settlement of the action. On examination of the parties the court was satisfied that plaintiff did not authorize the agreement for settlement but expressly objected thereto, but that his attorney assumed that he would approve it and that the attorney acted in entire good faith with, and did what he thought was for the best interest of, his client. Held, that plaintiff's motion for a substitution of another attorney will be granted without prejudice to the attorney's claim under the contract for compensation and without prejudice to his lien therefor upon any recovery as specified in the contract, or upon the papers in the action. *Friedman v. Mindlin* (1915), 91 Misc. 473, 155 N. Y. Supp. 295.

Where a contract of retainer fixes the amount of the attorney's compensation for services and he has not offended either through misconduct or neglect, the court is without power to reduce the amount fixed by the contract when the client dismisses, or applies for leave to change, his attorney. *Friedman v. Mindlin* (1915), 91 Misc. 473, 155 N. Y. Supp. 295.

A litigant has the unquestioned right to change his attorney, even capriciously, at any stage of the litigation, but in the absence of misconduct or neglect on the part of the attorney the substitution will be directed only upon such terms as are fair to him. *Friedman v. Mindlin* (1915), 91 Misc. 473, 155 N. Y. Supp. 295.

Protection of contractual rights.—A contract by which an attorney undertakes to conduct litigation for a client is entire and so long as the attorney observes good faith he will be protected by the courts in his contractual rights. *Friedman v. Mindlin* (1915), 91 Misc. 473, 155 N. Y. Supp. 295.

§ 475. Attorney's lien in action or special proceeding.

"Charging lien" and "retaining lien" distinguished; lien for services outside of any action or special proceeding.—This section provides for a lien only in cases in which there has been commenced an action or special proceeding in which the client has asserted a claim or a counterclaim. It regulates what is known to the law as a "charging lien" as distinguished from a "retaining lien," which is dependent upon possession by the attorney of papers, securities or moneys belonging to his client. Hence, an attorney may not, under said section, establish and enforce a lien upon his client's property for a general balance on account for serv-

§§ 650, 752.

Record of fines imposed on jurors.

L. 1916, ch. 398.

ices rendered outside of any special proceeding or action. *Matter of Craig* (1916), 171 App. Div. 218, 157 N. Y. Supp. 310.

When attorney employed by director of corporation to recover property misappropriated by officers thereof has lien on property transferred by officers to corporation in discharge of his liability. *Schoenherr v. Van Meter* (1915), 215 N. Y. 548, revg. 158 App. Div. 907.

Lien upon client's interest in estate.—Attorneys who have furnished legal services in probating a will in which their client, who is the sole legatee, is appointed administratrix, and as such has obtained the entire estate which will eventually belong to her individually, have a lien under this section for the value of their services, upon their client's individual interest in the estate and upon her refusal to pay are entitled to a compulsory accounting. *Matter of Wood* (1915), 170 App. Div. 533, 156 N. Y. Supp. 810.

Enforcement of lien for services; motion by client to vacate notice of lien pending action to establish same.—The court on a motion by a client will not summarily determine the validity of a lien upon a judgment, filed by an attorney after the substitution of another attorney, where an action brought by the lienor to foreclose his lien is pending and undetermined. The validity of the lien should be determined in the suit to foreclose it. *Hoffstaetter v. Schinkel* (1915), 168 App. Div. 36, 153 N. Y. Supp. 768.

Lien of attorney upon specific fund; priority over claim on such fund under contract.—A claim, in order to supersede an attorney's lien, must be a prior charge against the specific fund upon which the lien has attached. It is not sufficient for such claim to be a general debt against the client. Hence, a claim merely based upon an agreement of a decedent to pay a debt out of a particular fund is not equivalent to an assignment of the fund, and does not create an equitable lien upon it, and is inferior to the lien of an attorney for the administratrix of the decedent upon said fund under a written retainer. The fact that a judgment was entered in favor of the claimant and against the administratrix after the attorney's lien attached had no effect upon his rights, he not having been a party to the action. *Bacon v. Schlesinger* (1916), 171 App. Div. 503, 157 N. Y. Supp. 649.

§ 650. Commissioner must transmit a record of fines imposed upon delinquent jurors to corporation counsel.—Upon receiving the return to the minute and certificate required by the provisions of section six hundred and thirty-four to be filed in the office of the commissioner of jurors, said commissioner shall transmit to the corporation counsel a record of every imposition of a fine upon a delinquent juror as shown in the said return. The record of every such fine shall be set forth separately upon a card or paper in duplicate form. The corporation counsel shall enter upon the duplicate of such record the final disposition of every proceeding or proceedings which shall have been undertaken by him to enforce such fine, and shall return such duplicate to the commissioner of jurors. (*Amended by L. 1916, ch. 398, in effect May 2, 1916.*)

§ 752. Requisites of commitment for criminal contempt.

Order of commitment reversed because it does not state that disobedience was willful.—A final order, which adjudges a defendant guilty of criminal contempt for disobeying an injunction, but does not set forth that the defendant was guilty of a willful disobedience of the lawful mandate of the court, fails to comply with the statute and must be reversed as defective and the contempt proceeding be dismissed. *Pawolowski v. City of Schenectady* (1916), 217 N. Y. 117.

L. 1916, ch. 448.

Justices of the peace; books.

Code Civ. Pro. § 3146.

Mandate not setting forth circumstances of offense.—Order punishing an attorney for a criminal contempt of court examined, and *held*, insufficient to justify the act of the justice in that “the particular circumstances” of the offense were not set forth in the mandate of commitment as required by this section of the Judiciary Law. *People ex rel. Bernstein v. La Fetra* (1916), 171 App. Div. 269, 157 N. Y. Supp. 386.

§ 770. Final order directing punishment.

Disobedience of order directing payment of money.—Where it is clear that the disobedience of an order directing payment of a sum of money by the respondent as a person beneficially interested under section 3247 of the Code of Civil Procedure, in an action brought by plaintiff as assignee of respondent, defeats the remedy of plaintiff in the present action, the court is in duty bound to punish respondent as for a contempt under section 770 of the Judiciary Law; should it hereafter appear that respondent was unable to pay the amount so directed to be paid he may apply for relief under section 775 of the Judiciary Law. *Basch v. Associated Features Booking Co.* (1915), 92 Misc. 450, 156 N. Y. Supp. 162.

§ 773. Amount of fine.

A judgment debtor as a punishment for a contempt in disobeying an order to appear for an examination in supplementary proceedings may be fined in a sum not exceeding \$250, but it must appear that the act of the judgment debtor either did or was calculated to defeat, impair or impede some right or remedy of the judgment creditor. *Amendola v. Zema* (1916), 93 Misc. 525, 157 N. Y. Supp. 273.

JUSTICES OF THE PEACE.

Code of Civil Procedure.

§ 3146. **Town or city clerk to demand books, et cetera, upon death, et cetera, of justice.**—If a justice of the peace dies, or his office becomes otherwise vacant, the town or city clerk must demand and receive all books and papers, which belonged to the justice in his official capacity, from any person having them in his possession, and such clerk may make and issue a transcript of a judgment so rendered by such a justice of the peace and appearing upon the docket of such justice of the peace so on file in his office, and issue an execution upon any such judgment which has not been docketed in the office of the county clerk, upon receiving his fees for the same, which shall be the same now allowed a justice of the peace for issuing a transcript of a judgment so rendered by such a justice of the peace and execution so issued by such clerk shall have the same force and effect as though the same had been issued by such justice of the peace during his term of office. (*Amended by L. 1916, ch. 448, in effect Sept. 1, 1916.*)

KINGS COUNTY.

Salaries of clerks to transfer tax appraisers; Tax L., § 229.

Transfer tax assistants and clerks in surrogate's court; Tax L., § 234.

LABOR LAW.

(L. 1909, ch. 36.)

§ 2. Definitions.

Employee defined. *People v. Interborough Rapid Transit Co.* (1915), 169 App. Div. 32, 154 N. Y. Supp. 627.

§ 3. Hours to constitute a day's work.—Eight hours shall constitute a legal day's work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law. This section does not prevent an agreement for over work at an increased compensation except upon work by or for the state or a municipal corporation, or by contractors or subcontractors therewith. Each contract to which the state or a municipal corporation or a commission appointed pursuant to law is a party which may involve the employment of laborers, workmen, or mechanics shall contain a stipulation that no laborer, workman or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day except in cases of extraordinary emergency caused by fire, flood or danger to life or property. The wages to be paid for a legal day's work as hereinbefore defined to all classes of such laborers, workmen or mechanics upon all such public works, or upon any material to be used upon or in connection therewith, shall not be less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where such public work on, about or in connection with which such labor is performed in its final or completed form is to be situated, erected or used. Each such contract hereafter made shall contain a stipulation that each such laborer, workman or mechanic, employed by such contractor, subcontractor or other person on, about or upon such public work, shall receive such wages herein provided for. Any person or corporation who violates any provision of this section shall be guilty of a misdemeanor and upon conviction shall be punished, for a first offense by a fine of five hundred dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment; for a second offense by a fine of one thousand dollars, and in addition thereto, the contract on which the violation has occurred shall be forfeited; and no such person or corporation shall be entitled to receive any sum nor shall any officer, agent or employee of the state or of a municipal corporation pay the same or authorize its payment from the funds under his charge or control to any such person or corporation for work done upon any contract, on which the contractor has been convicted of a second offense in violation of the provisions of this section. Nothing in this section shall be construed to apply to

L. 1916, ch. 152.

Violations.

§ 4, 8a, 11.

stationary firemen in state hospitals nor to other persons regularly employed in state institutions, except mechanics, nor shall it apply to engineers, electricians and elevator men in the department of public buildings during the annual session of the legislature, nor to the construction, maintenance and repair of highways outside the limits of cities and villages. (*Amended by L. 1909, ch. 292, L. 1913, chs. 467, 494, and L. 1916, ch. 152, in effect Apr. 7, 1916.*)

The provisions of this section are all mandatory, and the fact that a railroad made its estimate upon a contract with the state upon a ten-hour per day basis, cannot relieve it or the state officials from full compliance with the statute. Contracts should not be made by the state with a railroad company or any other public service corporation, relieving it or them from full compliance with the eight-hour provisions of the Labor Law. *Atty. Genl. Opin., 6 State Dep. Rep. 494 (1916).*

Pleading.—A defense that a contractor for municipal work violated the Labor Law by requiring or permitting his employees to work more than eight hours a day must be pleaded as an affirmative defense, and the answer must negative the application of the exception in the statute with respect to extraordinary emergencies. *Molloy v. Village of Briarcliff Manor (1916), 217 N. Y. 577, affg. 158 App. Div. 456.*

§ 4. Violations of the labor law.—Any officer, agent or employee of this state or of a municipal corporation therein having a duty to act in the premises who violates, evades or knowingly permits the violation or evasion of any of the provisions of this chapter shall be guilty of malfeasance in office and shall be suspended or removed by the authority having power to appoint or remove such officer, agent or employee; otherwise by the governor. Any citizen of this state may maintain proceedings for the suspension or removal of such officer, agent or employee who knowingly permits the violation of any of the provisions of this chapter. (*Amended by L. 1916, ch. 152, in effect Apr. 7, 1916.*)

§ 8-a. One day of rest in seven.

Constitutionality.—Subdivision 3 of this section, providing that before operating on Sunday, every employer shall post in a conspicuous place on the premises a schedule containing a list of his employees who are required or allowed to work on Sunday, and designating the day of rest for each, and shall file a copy of such schedule with the Commissioner of Labor, and subdivision 4, providing that every employer shall keep a timebook showing the names and addresses of all employees and the hours worked by each of them in each day, and such timebook shall be open to inspection by the Commissioner of Labor, are valid, reasonable and constitutional. *People v. Eberhart (1916), 171 App. Div. 458, 157 N. Y. Supp. 133.*

Failure to post list of employees.—An employer may be convicted for violating the Penal Law in failing to post a list of employees and file a copy thereof before operating on Sunday, as required by subdivision 3 of section 8a of the Labor Law, although one of the employees testified that her rest day had been the previous Thursday. *People v. Eberhart (1916), 171 App. Div. 458, 157 N. Y. Supp. 133.*

§ 11. When wages are to be paid.

"Employee" within meaning of section.—Under the provision that certain cor-

§§ 18, 20.

Scaffolding; protection of laborers.

porations shall "pay weekly to each employee the wages earned by him," and under section 2 of said statute, defining the term "employee" to mean "a mechanic, workingman or laborer who works for another for hire," a stenographer, accountant, typist, chainman, levelman, civil engineer, rodman, bookkeeper, draftsman, structural designer and a clerk employed by a street railway company are not employees within the meaning of the statute. But a maker of blue prints, an office boy, a matron, a telephone switchboard operator and a chauffeur employed by such corporation are employees within the meaning of the statute. Since a civil engineer is not a workingman, mechanic or laborer, payment of his compensation by check is lawful. *People v. Interborough Rapid Transit Co.* (1915), 169 App. Div. 32, 154 N. Y. Supp. 627.

§ 18. Scaffolding for use of employees.

Application of section.—*Pierce v. Atlantic, Gulf & Pacific Co.* (1915), 216 N. Y. 209; *Slaviz v. Wahlig & Sousin Co.* (1915), 167 App. Div. 658, 153 N. Y. Supp. 54.

This section is applicable, although the injured party built or helped to build the scaffold. *New York, N. H. & H. R. R. Co. v. Mooney* (1915), 223 Fed. 626.

"Scaffolding."—A temporary platform consisting of a plank placed between two girders on which an employee was working constitutes a "scaffolding" within the meaning of the statute. *New York, N. H. & H. R. R. Co. v. Mooney* (1915), 223 Fed. 626.

Employer not an insurer.—Although a scaffold must be safe, suitable and proper, the master is not made an insurer, and where a servant was injured while endeavoring to level up a scaffold suspended by ropes the obligation of the master must be considered with reference to the method of adjustment taken by the servant. *Griffin v. Pennsylvania Steel Co.* (1916), 171 App. Div. 675, 157 N. Y. Supp. 65.

Injury to servant by master's failure to furnish a safe and suitable scaffold; questions for the jury.—Plaintiff, who was in defendant's employ, was injured while engaged in the erection of a building and brings this action under the provisions of the Labor Law, by which it is made the duty of the defendant to furnish such safe, suitable and proper scaffolds as were reasonably necessary for the safety of his employees. Upon examination of the facts, *held*, that the jury could have found that a scaffold was reasonably necessary for the plaintiff's use in the work in which he was engaged and required to do at the particular place where the accident occurred, and that it was for the jury to say whether the plaintiff under all the circumstances was guilty of contributory negligence. *Bidwell v. Cummings* (1916), 217 N. Y. 542.

Fall from defective scaffold; evidence justifying verdict for plaintiff.—Action to recover for the death of the plaintiff's intestate, who, while employed as a carpenter by the defendant, fell from a scaffold which was alleged to have been defective under section 18 of the Labor Law, in that the floor boards were not fastened down and because there was no railing. There was evidence of the defective condition of the platform, but the defendant contended that the platform was being removed at the time of the accident and that the decedent was actually engaged in tearing it down. On all the evidence, *held*, that, although the weight of evidence was in favor of the defendant, there was sufficient evidence to justify a verdict for the plaintiff. *Rice v. Cummings Construction Co.* (1915), 169 App. Div. 832, 155 N. Y. Supp. 766.

§ 20. Protection of persons employed on buildings in cities.

Duty to lay floor.—There is no absolute duty on the part of the owner or contractor under this section of the Labor Law, as amended, to floor or fill in all of the ground floor space. *Ithaca Trust Co. v. Driscoll Brothers & Co.* (1915), 169 App. Div. 377, 154 N. Y. Supp. 1027.

L. 1916, ch. 465.

Employment certificates; issuance.

§§ 21, 71.

See generally, *Slaviz v. Wahlig & Sousin Co.* (1915), 167 App. Div. 658, 153 N. Y. Supp. 54.

§ 21. **Commissioner of labor to enforce provisions of article.**—The commissioner of labor shall enforce all the provisions of this article. He shall investigate complaints made to him of violations of such provisions and if he finds that such complaints are well founded he may issue an order directed to the person or corporation complained of, requiring such person or corporation to comply with such provisions, or he may present to the district attorney of the proper county all the facts ascertained by him in regard to the alleged violation, and all other papers, documents or evidence pertaining thereto, which he may have in his possession. The district attorney to whom such presentation is made shall proceed at once to prosecute the person or corporation for the violations complained of, pursuant to this chapter and the provisions of the penal law. If complaint is made to the commissioner of labor that any person contracting with the state or a municipal corporation for the performance of any public work fails to comply with or evades the provisions of this article respecting the payment of the prevailing rate of wages, the requirements of hours of labor or the employment of citizens of the United States or of the state of New York, the commissioner of labor shall, if he finds such complaints to be well founded, present evidence of such non-compliance to the officer, department or board having charge of such work. Such officer, department or board shall thereupon take the proper proceedings to enforce compliance with the provisions of this article. (*Amended by L. 1916, ch. 152, in effect Apr. 7, 1916.*)

§ 71. **Employment certificate, how issued.**—Such certificate shall be issued by the commissioner of health or the executive officer of the board or department of health of the city, town or village where such child resides or is to be employed, or by such other officer thereof as may be designated by such board, department or commissioner for that purpose, upon the application of the parent, guardian or custodian of the child desiring such employment. Such officer shall not issue such certificate until he has received, examined, approved and filed the following papers duly executed, namely: The school record of such child properly filled out and signed as provided in this article; also, evidence of age showing that the child is fourteen years old or upwards, which shall consist of the evidence thereof provided in one of the following subdivisions of this section and which shall be required in the order herein designated as follows:

(a) Birth certificate; passport or baptismal certificate. A duly attested transcript of the birth certificate filed according to law with a registrar of vital statistics or other officer charged with the duty of recording births; or a passport; or a duly attested transcript of a certificate of baptism showing the date of birth of such child.

(b) Other documentary evidence. In case it shall appear to the satis-

faction of the officer to whom application is made, as herein provided, for an employment certificate, that a child for whom such certificate is requested and who has presented the school record, is in fact over fourteen years of age, and that satisfactory documentary evidence of age can be produced, which does not fall within any of the provisions of the preceding subdivisions of this section, and that none of the papers mentioned in said subdivisions can be produced, then and not otherwise he shall present to the board of health of which he is an officer or agent, for its action thereon, a statement signed by him showing such facts, together with such papers as may have been produced before him constituting such evidence. The commissioner of health, or when officially authorized, the issuing officer of the board or department of health may then accept such evidence as sufficient as to the age of such child, and a record of such evidence shall be fully entered on the minutes of the board at the next meeting thereof.

(c) Physicians' certificates. In cities of the first class only, in case application for the issuance of an employment certificate shall be made to such officer by a child's parent, guardian or custodian who alleges his inability to produce any of the evidence of age specified in the preceding subdivisions of this section, and if the child is apparently at least fourteen years of age, such officer may receive and file an application signed by the parent, guardian or custodian of such child for physicians' certificates. Such application shall contain the alleged age, place and date of birth, and present residence of such child, together with such further facts as may be of assistance in determining the age of such child. Such application shall be filed for not less than sixty days after date of such application for such physicians' certificates, for an examination to be made of the statements contained therein, and in case no facts appear within such period or by such examination tending to discredit or contradict any material statement of such application, then and not otherwise the officer may direct such child to appear thereafter for physical examination before two physicians officially designated by the board of health, and in case such physicians shall certify in writing that they have separately examined such child and that in their opinion such child is at least fourteen years of age such officer shall accept such certificate as sufficient proof of the age of such child for the purposes of this section. In case the opinions of such physicians do not concur, the child shall be examined by a third physician and the concurring opinions shall be conclusive for the purpose of this section as to the age of such child.

Such officer shall require the evidence of age specified in subdivision (a) in preference to that specified in any subsequent subdivision and shall not accept the evidence of age permitted by any subsequent subdivision unless he shall receive and file in addition thereto an affidavit of the parent showing that no evidence of age specified in any preceding subdivision or subdivisions of this section can be produced. Such affidavit shall contain the age, place and date of birth, and present residence of such child, which affidavit

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must be taken before the officer issuing the employment certificate, who is hereby authorized and required to administer such oath and who shall not demand or receive a fee therefor.

Such employment certificate shall not be issued until such child further has personally appeared before and been examined by the officer issuing the certificate, and until such officer shall, after making such examination, sign and file in his office a statement that the child can read and write correctly simple sentences in the English language and that in his opinion the child is fourteen years of age or upwards and has reached the normal development of a child of its age, and is in sound health and is physically able to perform the work which it intends to do. Every such employment certificate shall be signed, in the presence of the officer issuing the same, by the child in whose name it is issued. In every case, before an employment certificate is issued, such physical fitness shall be determined by a medical officer of the department or board of health, who shall make a thorough physical examination of the child and record the result thereof on a blank to be furnished for the purpose by the industrial commission and shall set forth thereon such facts concerning the physical condition and history of the child as the industrial commission may require.

In case the evidence of age, filed as in this section provided, shows such child to be fourteen years old but fails to show such child to be fifteen years old, no employment certificate shall be issued unless such child, in addition to complying with all the requirements of this section and producing the school record described in section seventy-three shall also present a certificate of graduation properly issued in the name of such child from a public elementary school, or school equivalent thereto or parochial school, or a preacademic certificate issued by the regents, or a certificate of the completion of an elementary course issued by the education department. (*Amended by L. 1912, ch. 333, and L. 1916, ch. 465, in effect Feb. 1, 1917.*)

§ 79-f. **Meaning of terms.**—*Subd. 1, amended by L. 1916, ch. 62, in effect Mch. 21, 1916, as follows:*

1. **Fireproof construction.** A building shall be deemed to be of fireproof construction if it conforms to the following requirements: All walls constructed of brick, stone, concrete or terra cotta; all floors and roofs of brick, terra cotta or reinforced concrete placed between steel or reinforced concrete beams and girders; all the steel entering into the structural parts encased in at least two inches of fireproof material, excepting the wall columns, which must be encased in at least eight inches of masonry on the outside and four inches on the inside; all stair wells, elevator wells, public hallways and corridors inclosed by fireproof partitions; all doors, fireproof; all stairways, landings, hallways and other floor surfaces of incombustible material; no woodwork or other combustible material used in any partition, furring, ceiling or floor; and all window frames, doors and sash, trim and other interior finish of incombustible material; all windows shall

be fireproof windows except that in buildings under seventy feet in height fireproof windows are required only when within thirty feet of another building or opening on a court or space less than thirty feet wide, and except further that any window not within thirty feet in a direct line of another building not in the same vertical plane, nor opening on a court or space less than thirty feet wide, nor within fifty feet in a vertical direction above the roof of a building within thirty feet, may be provided with plate glass not less than one-fourth of an inch in thickness, no light of which shall exceed seven hundred and twenty square inches in area; except that in buildings under one hundred feet in height there may be wooden sleepers and floor finish and wooden trim, and except that in buildings under one hundred and fifty feet in height heretofore constructed there may be wooden sleepers, floor finish and trim and the windows need not be fireproof windows, excepting when such windows are within thirty feet of another building. (*Section added by L. 1913, ch. 461, and subd. amended by L. 1916, ch. 62, in effect Mch. 21, 1916.*)

§ 80. Stairs and doors.

Applicable to both owner and tenant.—This section and section 94 of the Labor Law, providing for the erection and maintenance of handrails on stairways in factories impose the duty of compliance therewith on the owner as well as on the tenant. *Irwin v. Simon* (1915), 170 App. Div. 811, 156 N. Y. Supp. 483.

§ 81. Protection of employees operating machinery.

Failure to guard machine; master not liable for accident not reasonably to be anticipated.—Where a person not engaged in the operation of a machine and in disobedience of the request of the operator, attempted to do something, not in the line of his duty, with the result that the machine was put in motion and the operator injured, *held*, not a risk or accident reasonably to be anticipated as the result of failure to guard the machine, and that, therefore, a right of action did not accrue under this section of the Labor Law. *Basel v. Ansonia Clock Co.* (1915), 216 N. Y. 356.

§ 82. Fire escapes.—(*Repealed by L. 1913, ch. 461.*)

Provision requiring fire escapes on outside of every factory building "connected with the interior by easily accessible and unobstructed openings"; death of employee of lessee caused by fire; when owner of building liable for failure to have accessible fire escape on building.—Under the provisions of the Labor Law (prior to the enactment of chapter 461 of the Laws of 1913) requiring the erection and maintenance of fire escapes on the outside of certain buildings used for a factory or tenant factory, "connected with the interior by easily accessible and unobstructed openings," the obligation to maintain an accessible and unobstructed fire escape was imposed upon the owner of the building. The statute expressly provided that the owner, "instead of the respective lessees or tenants," shall be responsible and he cannot avoid liability for failure to obey the statute by delegating the performance of the duty to others. In an action against the owner, the lessee and the sublessee of a factory building for negligently causing the death of an employee of the sublessee who lost his life in a fire in the building, it appeared that a wooden partition erected by the sublessee separated the workroom of the sublessee from the hallway which led to the fire escape. The only way out of the workroom to the hall was through a self-locking door in the partition opening into the office of the

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§ 83a.

sublessee and thence through another door into the hall. In the rear wall of the workroom was a small window, or opening, in the partition three feet from the floor. A fire suddenly broke out in the workroom of the sublessee and plaintiff's intestate endeavored to make his way out through the door leading into the office, which was shut and which he was unable to open. He then tried to get out of the workroom through the opening in the rear partition, but was unable to do so and was burned to death. The trial court dismissed the complaint as against the owner and as against the lessees of the building. *Held*, that the judgment in favor of the lessees should be affirmed since there is no statutory liability imposed upon them; that it was error to dismiss the complaint as a matter of law, as against the owner, since under the evidence it was a question of fact whether he had complied with the provisions of the statute in question, and the judgment in his favor should be reversed. *Goetz v. Duffy* (1915), 215 N. Y. 53, modfg. 160 App. Div. 845, 146 N. Y. Supp. 152.

Provisions of building code.—Where an action to recover for personal injuries has been tried upon the theory that the duties of the defendant landlord were regulated by sections 82 and 94 of the Labor Law relating to fire escapes, and an appeal has been taken to the Court of Appeals and argued on that theory, the defendant cannot subsequently maintain that her duties were regulated solely by section 103 of the Building Code of the city of New York, where it was not put in evidence and no portion of it appears on the record on appeal. *Goetz v. Duffy* (1916), 171 App. Div. 680, 157 N. Y. Supp. 590.

§ 83-a. Fire alarm signal systems and fire drills.—1. Every factory building over two stories in height in which more than twenty-five persons are employed above the ground floor shall be equipped with a fire alarm signal system with a sufficient number of signals clearly audible to all occupants thereof, except in buildings in which every square foot of the floor area on all stories is protected with an automatic sprinkler system having two adequate sources of water supply and approved by the public authorities having jurisdiction and in which also the maximum number of occupants on any one floor does not exceed by more than fifty per centum the capacity of the exits as determined by subdivisions one, two, three, four, five, six and seven of section seventy-nine-e of this chapter. The industrial board may make rules and regulations prescribing the number and location of such signals. Such system shall be installed by the owner or lessee of the building and shall permit the sounding of all the alarms within the building whenever the alarm is sounded in any portion thereof. Such system shall be maintained in good working order. No person shall tamper with, or render ineffective any portion of said system except to repair the same. It shall be the duty of whoever discovers a fire to cause an alarm to be sounded immediately.

2. In every factory building over two stories in height in which more than twenty-five persons are employed above the ground floor, a fire drill which will conduct all the occupants of such building to a place of safety and in which all the occupants of such building shall participate simultaneously shall be conducted at least once a month, except in buildings in which every square foot of the floor area on all stories is protected with an automatic sprinkler system having two adequate sources of water supply

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and approved by the public authorities having jurisdiction and in which also the maximum number of occupants on any one floor does not exceed by more than fifty per centum the capacity of the exits as determined by subdivisions one, two, three, four, five, six and seven of section seventy-nine-e of this chapter.

In the city of New York the fire commissioner of such city and elsewhere the industrial board shall make rules, regulations and special orders necessary or suitable to each situation and in the case of buildings containing more than one tenant, necessary or suitable to the adequate co-operation of all the tenants of such building in a fire drill of all the occupants thereof. Such rules, regulations and orders may prescribe upon whom shall rest the duty of carrying out the same. Such special orders may require posting of the same or an abstract thereof.

3. In the city of New York the fire commissioner of such city, and elsewhere the commissioner of labor is charged with the duty of enforcing this section. (*Added by L. 1912, ch. 330, and amended by L. 1913, ch. 203, L. 1915, ch. 347 and L. 1916, ch. 466, in effect May 9, 1916.*)

§ 94. Tenant factories.

Obligation of owner to maintain accessible and unobstructed fire escape.—*Goetz v. Duffy* (1915), 215 N. Y. 53, modfg. 160 App. Div. 845.

§ 120. Duties of commissioner of labor relating to mines.

Inspection after firing blast; duty of master to have adequate inspection made before permitting servant to work at place where blast has been fired.—The commissioner of labor pursuant to the statute has made and published rules to insure the safety and health of persons employed in mines, and it is the duty of employers not only to adopt such rules, but to enforce them. If such rules, after written notice to him, are not obeyed, the employer is liable criminally and is also subject in case of an injury resulting from their disobedience to the ordinary consequences arising from negligence. The rules of the commissioner of labor made pursuant to legislative authority and intended to supplement the rules of the common law for the protection and safety of those working in mines, provide that after a blast has been fired in a mine no one shall be allowed in that part of the mine where such blast has been fired, except the blaster and his helper, unless and until the blaster has made a personal examination and pronounced "all safe." Plaintiff, who was employed in a mine, was taken by the foreman from the room where he was working to another in which he had never worked and directed to drill holes for blasting. Near the place where plaintiff was directed to drill there was one hole. Plaintiff testified that he pointed out this hole to the foreman, who said, in substance, that he had examined the hole, that it was all right, and directed plaintiff to measure it with his drill, and then put two more holes close to it. Plaintiff attempted to measure the hole as directed, and was injured by the explosion which followed. Defendant's foreman denied this, and testified that he had inspected the room, that he saw the hole, that it was filled with explosives, and that he warned plaintiff against it. *Held*, that judgment for plaintiff entered upon the verdict of the jury should be affirmed; that the jury could have found that plaintiff was expressly directed to measure the hole by placing his drill therein; that, although the blaster and the foreman each were charged with the duty of inspecting the place, the foreman assumed without adequate inspection that the hole was

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free from explosives, and, hence, that the defendant was negligent in its inspection of the mine after an explosion and in directing plaintiff to perform his work in an unsafe place. Plaintiff was not guilty of contributory negligence since he was obeying the instruction of the foreman. *Mautsewich v. United States Gypsum Co.* (1916), 217 N. Y. 593.

§ 135. Enforcement of article.

Liability of employer for disobedience of rules promulgated by commissioner of labor pursuant to section 120 of the Labor Law. *Mautsewich v. United States Gypsum Co.* (1916), 217 N. Y. 593.

§ 163. Employment certificate, how issued.—Such certificate shall be issued by the commissioner of health or the executive officer of the board or department of health of the city, town or village where such child resides or is to be employed, or by such other officer thereof as may be designated by such board, department or commissioner for that purpose, upon the application of the parent, guardian or custodian of the child desiring such employment. Such officer shall not issue such certificate until he has received, examined, approved and filed the following papers duly executed, namely: The school record of such child properly filled out and signed as provided in this article; also, evidence of age showing that the child is fourteen years old or upwards, which shall consist of the evidence thereof provided in one of the following subdivisions of this section and which shall be required in the order herein designated as follows:

(a) Birth certificate; passport or baptismal certificate. A duly attested transcript of the birth certificate filed according to law with a registrar of vital statistics or other officer charged with the duty of recording births; or a passport; or a duly attested transcript of a certificate of baptism showing the date of birth of such child.

(b) Other documentary evidence. In case it shall appear to the satisfaction of the officer to whom application is made, as herein provided, for an employment certificate, that a child for whom such certificate is requested and who has presented the school record, is in fact over fourteen years of age, and that satisfactory documentary evidence of age can be produced, which does not fall within any of the provisions of the preceding subdivisions of this section, and that none of the papers mentioned in said subdivisions can be produced, then and not otherwise he shall present to the board of health of which he is an officer or agent, for its action thereon, a statement signed by him showing such facts, together with such papers as may have been produced before him constituting such evidence. The commissioner of health, or when officially authorized, the issuing officer of the board or department of health may then accept such evidence as sufficient as to the age of such child, and a record of such evidence shall be fully entered on the minutes of the board at the next meeting thereof.

(c) Physicians' certificates. In cities of the first class only, in case application for the issuance of an employment certificate shall be made to such officer by a child's parent, guardian or custodian who alleges his in-

§ 163. Mercantile establishments; employment certificates. L. 1916, ch. 465.

ability to produce any of the evidence of age specified in the preceding subdivisions of this section, and if the child is apparently at least fourteen years of age, such officer may receive and file an application signed by the parent, guardian or custodian of such child for physicians' certificates. Such application shall contain the alleged age, place and date of birth, and present residence of such child, together with such further facts as may be of assistance in determining the age of such child. Such application shall be filed for not less than sixty days after date of such application for such physicians' certificates, for an examination to be made of the statements contained therein, and in case no facts appear within such period or by such examination tending to discredit or contradict any material statement of such application, then and not otherwise the officer may direct such child to appear thereafter for physical examination before two physicians officially designated by the board of health, and in case such physicians shall certify in writing that they have separately examined such child and that in their opinion such child is at least fourteen years of age such officer shall accept such certificates as sufficient proof of the age of such child for the purposes of this section. In case the opinions of such physicians do not concur, the child shall be examined by a third physician and the concurring opinions shall be conclusive for the purpose of this section as to the age of such child.

Such officer shall require the evidence of age specified in subdivision (a) in preference to that specified in any subsequent subdivision and shall not accept the evidence of age permitted by any subsequent subdivision unless he shall receive and file in addition thereto an affidavit of the parent showing that no evidence of age specified in any preceding subdivision or subdivisions of this section can be produced. Such affidavit shall contain the age, place and date of birth, and present residence of such child, which affidavit must be taken before the officer issuing the employment certificate, who is hereby authorized and required to administer such oath and who shall not demand or receive a fee therefor.

Such employment certificate shall not be issued until such child further has personally appeared before and been examined by the officer issuing the certificate, and until such officer shall, after making such examination, sign and file in his office a statement that the child can read and write correctly simple sentences in the English language and that in his opinion the child is fourteen years of age or upwards and has reached the normal development of a child of its age, and is in sound health and is physically able to perform the work it intends to do. Every such employment certificate shall be signed in the presence of the officer issuing the same, by the child in whose name it is issued. In every case, before an employment certificate is issued, such physical fitness shall be determined by a medical officer of the department or board of health, who shall make a thorough physical examination of the child and record the result thereof on a blank to be furnished for the purpose by the industrial commission and shall set

forth thereon such facts concerning the physical condition and history of the child as the industrial commissioner may require.

In case the evidence of age, filed as in this section provided, shows such child to be fourteen years old but fails to show such child to be fifteen years old, no employment certificate shall be issued unless such child, in addition to complying with all the requirements of this section and producing the school record described in section seventy-three, shall also present a certificate of graduation properly issued in the name of such child, from a public elementary school, or school equivalent thereto, or parochial school, or a preacademic certificate issued by the regents, or a certificate of the completion of an elementary course issued by the education department. (*Amended by L. 1913, ch. 144, and L. 1916, ch. 465, in effect May 9, 1916.*)

§ 200. Employer's liability for injuries.

"Ways, works, machinery and plant."—The word "plant" in its ordinary acceptance when used in connection with and relating to a business includes everything other than supplies and stock in trade necessary and requisite to the carrying on of the business. A plant is defective when any part of it is not in a proper condition for the purpose for which it was intended, and it is also defective when it is so incomplete that the use of the plant is dangerous by reason of the failure to furnish reasonably necessary parts for the purpose for which it is used. *Wiley v. Solvay Process Co.* (1915), 215 N. Y. 584, affg. 157 App. Div. 943, 142 N. Y. Supp. 1150.

In an action under the employers' liability provision of the Labor Law, as amended, to recover for personal injuries alleged to have been occasioned plaintiff by reason of the failure of defendant to furnish him a certain punch which plaintiff asserts constituted a defect in the condition of defendant's "ways, works, machinery and plant," *held*, that the questions whether defendant's plant was defective by reason of its failure to supply such punch and whether the plaintiff assumed the risk of injury therefrom were properly left to the jury. *Wiley v. Solvay Process Co.* (1915), 215 N. Y. 584, affg. 157 App. Div. 943, 142 N. Y. Supp. 1150.

Where plaintiff, a laborer, was injured by falling through the first floor into the basement of a building then in course of construction, and it appears that when plaintiff fell defendant, his employer, was not conducting any business on said floor and that he was under no obligation to maintain any "way" within the meaning of section 200 of the Labor Law in connection with any business at the place, defendant was not liable for failure to maintain a flooring over the basement, plaintiff under the orders given him by his foreman being under no obligation to enter a room which had no floor. *Maraglino v. Comes* (1915), 90 Misc. 297, 153 N. Y. Supp. 579.

Liability arises under the Employers' Liability Act only when the injured employee is "himself in the exercise of due care and diligence at the time" of his injuries. *Wenzel v. Ryan Construction Co.* (1915), 169 App. Div. 357, 154 N. Y. Supp. 809.

The fellow servant defense is not available under section 200 (2) of the Labor Law, as amended by L. 1910, ch. 352, where the injuries were caused by the negligence of one intrusted with superintendence or with authority to direct, control or command an employee in his work, even though that negligence occurred in a detail of the work. *O'Connor v. Stewart & Co.* (1916), 93 Misc. 586, 158 N. Y. Supp. 485.

Negligence of superintendent.—When any person in the service of an employer intrusted with any superintendence is negligent, and by reason thereof personal

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injury is caused to an employee who is himself in the exercise of due care and diligence at the time, a statutory ground of liability is established under the amendment of 1910 to this section. *Marion v. Coon Construction Co.* (1915), 216 N. Y. 178, affg. 157 App. Div. 95, 141 N. Y. Supp. 647.

Although a superintendent is performing an act not in the course of superintendence but such as would naturally be performed by an ordinary fellow-servant, the statute since the amendment of 1910 makes his employer liable for his negligence resulting in injury to an employee. *Pelow v. Oswego Construction Co.* (1916), 217 N. Y. 506, affg. 162 App. Div. 840.

Prior to 1910 it was held under the statute as then worded that the actionable negligence of the superintendent must occur in the course of his superintendence and not while he was performing the work of an ordinary fellow-servant. *Pelow v. Oswego Construction Co.* (1916), 217 N. Y. 506, affg. 162 App. Div. 840.

Order or direction of foreman.—Action to recover damages for death of an employee alleged to have been caused by defendant's negligence, in that its foreman ordered deceased to get upon a hod hoist which the foreman knew was unsafe. *Held*, that the foreman's direction to the employee to go upon the hoist was within the scope of his activities and was a direction of the employee in the performance of a duty as such. *Norton Co. v. Byers* (1915), 223 Fed. 765.

Injury to washer of automobile trucks; negligence of fellow-servant with authority to direct or control others.—In an action to recover for the death of plaintiff's intestate, who was employed by the defendant to wash automobile trucks, it appeared that it was customary for another employee in exclusive charge of the movement of the trucks in the building and yard, when he wished to move a truck or take it from the room, to order either the deceased or another washer to open the doors, and that on the day of the accident the deceased while opening the doors at the request of said other employee was crushed between a clothes locker and a truck which was being backed from the room. The rear portion of the truck was covered, so that the operator could not ascertain whether the doors were open or not, and there was no testimony that the deceased had given any signal that the doors were open. It was *held*, that under such circumstances it was error to dismiss the complaint at the close of the plaintiff's case. Since the employee in charge of the trucks, whose negligence was a question for the jury, was intrusted with authority to direct, control or command the washers, the case is governed by subdivision 2 of section 200 of the Labor Law, as amended. *Gilpin v. Ruppert* (1915), 170 App. Div. 405, 155 N. Y. Supp. 1064.

Failure of foreman to stop descent of bucket in case of emergency.—Where a foreman, having charge of workmen excavating in a compressed air chamber many feet below the surface of the ground, ordered the workmen to ascend from the chamber because the shoring had given way and water was coming into the compartment, the jury may find that the foreman was negligent in failing to give a signal to stop the descent of a bucket into the compartment, he having facilities to give such signal, where, as the result of such omission, the descending bucket struck and caused the death of the plaintiff's intestate who was ascending the ladder. For such negligence the employer is liable under the Labor Law. *Cloonan v. McMullen Co.* (1915), 170 App. Div. 254, 156 N. Y. Supp. 328.

Safe place to work.—Where the defendant, an express company, maintained a properly constructed platform for the loading and unloading of freight, large quantities of which were handled daily, and the plaintiff, the driver of an express wagon, was injured in the foot by the fall of an iron casting which had been left standing on end resting against a pillar of the platform, there can be no recovery upon the theory that the defendant had failed to furnish the plaintiff with a reasonably safe place to work. *Maguire v. Barrett* (1915), 168 App. Div. 836, 154 N. Y. Supp. 468.

Where a master has originally furnished a reasonably safe place for his employees to work, he is not liable if the place be made temporarily unsafe in the progress of the work by the act of a coservant, or some person for whose actions he is not responsible. *Maguire v. Barrett* (1915), 168 App. Div. 836, 154 N. Y. Supp. 468.

Injury to employee in tunnel by falling rock; when doctrine of safe place to work not applicable.—Where, in an action under the Employers' Liability Act to recover for personal injuries, it appears that the plaintiff while working in a tunnel, assisting in throwing broken rock into a car, was injured by a fall of rock from the roof, although a few hours before the roof of the tunnel had been properly "scaled" by the defendant's employees and the loose rock removed, it is reversible error to charge that the common-law rule as to safe place to work applies, and to leave the question to the jury as to whether or not the plaintiff was given a safe place. *Mekki v. Holbrook, Cabot & Rollins Corporation* (1915), 168 App. Div. 719, 154 N. Y. Supp. 382.

Injury to carpenter while nailing railing pieces on concrete form; evidence establishing prima facie case.—*Hendrickson v. O'Brien Construction Co.* (1915), 169 App. Div. 1, 154 N. Y. Supp. 405.

§ 201. Notice to be served.

The validity and sufficiency of notice should be tested by the existing facts in each case. Where a notice served under the statute stated the place of the accident as "in and about the construction of the foundation of an abutment and bridge at or near 225th Street and Harlem River, City of New York," it was error to strike out the notice on the ground of inaccuracy in stating the place of the accident, where it appears that only one abutment was being built in that locality at that time and the defendant was not in fact, misled by the notice. *Cloonan v. McMullen Co.* (1915), 170 App. Div. 254, 156 N. Y. Supp. 328.

Notice served by the plaintiff under the provisions of the Employers' Liability Act examined, and *held*, sufficient. *Wenzel v. Ryan Construction Co.* (1915), 169 App. Div. 357, 154 N. Y. Supp. 809.

The service of the notice prior to the commencement of an action, is a condition precedent to the maintenance of an action.—Where the complaint alleges that such a notice was served "on or about" the day of the commencement of the action, and this allegation is put in issue by the answer, and it is admitted on the trial that the notice was served by mail, and that the same person served the summons and complaint on the same day, but it does not appear from where the notice was mailed, or that it would have reached the defendant before the time when the summons and complaint were served, the proof of service of the notice prior to the commencement of the action is insufficient. *Nielsen v. Just Co.* (1915), 169 App. Div. 577, 155 N. Y. Supp. 442.

The fact that the plaintiff, in addition to service upon the defendant, served the notice of injury upon three other corporations having relations with the execution of the work, did not invalidate the notice as to the defendant where it had not been misled thereby. *Otway v. Snare & Triest Co.* (1915), 167 App. Div. 128, 152 N. Y. Supp. 845.

Place of business.—The "principal office" of a foreign corporation, at which a notice of claim for personal injuries may be served under the Labor Law, is not synonymous with its principal place of business which it is required to designate in its certificate filed in this state under the General Corporation Law, and parol evidence is admissible to show where its principal office. *Mason & Hanger Co. v. Sharon* (1916), 231 Fed. 861.

§ 202. Assumption of risks; contributory negligence, when a question of fact.

§ 202a.

Employer's liability for injuries.

Application.—The provisions making the question of assumption of risks by an employee one of fact, apply to an action brought under common-law principles. *Collelli v. Turner* (1915), 215 N. Y. 675, affg. 154 App. Div. 218, 138 N. Y. Supp. 900.

Under the statute there may still be a question of fact for a jury whether a servant exercised reasonable care for his own safety in the use of appliances furnished by the master. *Maloney v. Cunard Steamship Co.* (1916), 217 N. Y. 278, revg. 161 App. Div. 913, 145 N. Y. Supp. 1132.

§ 202-a. Trial; burden of proof.

Effect of section.—Since the addition to the Labor Law, providing that the contributory negligence of an injured employee shall be a defense to be "pleaded and proved by the defendant," a plaintiff in an action to recover from his employer damages for negligence, arising out of and in course of his employment, has been relieved of the burden of proving affirmatively that his own negligence did not contribute to the accident, and his case should, when he has made out a *prima facie* case of defendant's negligence, be submitted to the jury, unless it appears that the uncontradicted proof of his own negligence is so certain and convincing that no reasonable mind could reach the conclusion that he had been careful, and this is the rule even though a verdict in his favor would be set aside as against the weight of evidence. *Seyford v. Southern Pacific Co.* (1916), 216 N. Y. 613, revg. 159 App. Div. 870, 145 N. Y. Supp. 22.

LAND REGISTRATION.

Torrens Law amended; Real Property L., § 371, ff.

LARCENY.

Receiving stolen property; Penal L., § 1308.

LAW PRACTICE.

By corporations and associations prohibited; Penal L., § 280.

LEGISLATIVE LAW.

(L. 1909, ch. 37.)

§ 7-a. **Legislative library, librarian and assistants.**—There shall be a legislative library, to be located in the state capitol in rooms assigned by the trustees of public buildings, conveniently accessible to the members of both houses of the legislature, and such library shall be open throughout the year.

Such library shall be suitably furnished, equipped and maintained under the direction of the legislative librarian, within the amount of any moneys available therefor by appropriation, subject to joint rules, if any, that may be adopted by the senate and assembly in relation thereto. The legislative librarian and two assistant librarians heretofore chosen by the president of the senate and speaker of the assembly, shall serve until their successors shall be chosen in like manner. Their salaries and compensation shall be payable monthly from moneys appropriated for compensation of officers and employees of the senate and assembly. During a vacancy in the office of legislative librarian, the assistant librarian who shall have been longest in the service of the state as a legislative employee, shall be employed as acting legislative librarian, with the powers and duties of such librarian, and shall receive during such a period the compensation herein prescribed for the legislative librarian. Such library shall be deemed established from and after the selection of the first legislative librarian hereunder. Such librarian shall have charge of the legislative library, but the two houses of the legislature may, by joint rules, regulate the use of the library and prescribe the powers and duties of the legislative librarian and the assistant librarians. (*Added by L. 1915, ch. 483, and L. 1916, ch. 290, in effect Apr. 24, 1916.*)

§ 24. **Legislative bill drafting commission.**—A legislative bill drafting commission is hereby created to consist of two commissioners to be appointed by the temporary president of the senate and the speaker of the assembly and to hold office until their successors are appointed. Such appointments shall be evidenced by certificate of such officers filed in the office of the secretary of state. The commission shall appoint a deputy commissioner. Each commissioner and the deputy commissioner shall be an attorney and counselor at law admitted to practice in the courts of the state for at least five years. Each commissioner shall receive an annual salary of five thousand dollars and the deputy commissioner an annual salary of three thousand and six hundred dollars. The commission may employ necessary legal and other assistants, whose compensation and terms shall be fixed by the

temporary president of the senate and the speaker of the assembly by certificate of such officers filed in the office of the state comptroller. The compensation and expenses provided for by this section shall be paid in six monthly installments, commencing with the first of January. (*Amended by L. 1913, ch. 812, and L. 1916, ch. 32, in effect Oct. 1, 1916.*)

§ 25. Duties of commissioners.—The commissioners shall:

1. Maintain an office in the state capitol, in rooms assigned by the trustees of public buildings conveniently accessible to both the senate and assembly, which shall be open from December first to the close of the annual legislative session, and for such further time as the temporary president of the senate and the speaker of the assembly shall direct;

2. Draft or aid in drafting legislative bills and resolutions, and amendments thereto, upon request of a member or committee of the legislature, or of a state department, commission, board or officer;

3. Advise as to the constitutionality, consistency or effect of proposed legislation, upon request of a member or committee of the legislature;

4. Make researches and examinations as to any subject of proposed legislation, upon request of either house or of a committee of the legislature;

5. Examine the general laws and report to the legislature such amendments to the consolidated laws, as the commission deems advisable, for the purpose of including therein independent general statutes. (*Amended by L. 1913, ch. 812, and L. 1916, ch. 32, in effect Oct. 1, 1916.*)

§ 26. Statement of appropriations.—The governor shall annually, within one week after the convening of the legislature, submit to the senate and assembly a statement of the total amount of appropriations desired by each state department, commission, board, bureau, office and institution, and may at the same time make such suggestions for reductions or additions thereto, as he deems proper. He may also at the same time submit as a part of such statement an estimate of the probable revenues of the state for the ensuing fiscal year. (*Added by L. 1916, ch. 130, in effect Apr. 5, 1916.*)

§ 27. Appointment of clerks of finance and ways and means committee.*—The chairman of the finance committee of the senate shall appoint the clerk of such committee. The chairman of the ways and means committee of the assembly shall appoint the clerk of such committee. Each appointment shall be evidenced by certificate duly executed by the officer making the appointment, and filed in the office of the secretary of state. Such clerks shall hold office until their successors are appointed. (*Added by L. 1916, ch. 130, in effect Apr. 5, 1916.*)

§ 28. Compensation, expenses, employees.—Such clerks shall receive an

* So in original.

annual salary of four thousand dollars each and shall be paid their office, traveling and other expenses necessarily incurred by them in the performance of their duties. The chairman of the finance committee of the senate and the chairman of the ways and means committee of the assembly may each appoint for the committee of which he is chairman a stenographer and an accountant to assist such committee and the clerk thereof in performing the duties prescribed by this article. The compensation of such employees of the finance committee of the senate shall be fixed by the chairman of the finance committee with the approval of the temporary president of the senate, and the compensation of such employees of the ways and means committee of the assembly shall be fixed by the chairman of the ways and means committee with the approval of the speaker. (*Added by L. 1916, ch. 130, in effect Apr. 5, 1916.*)

§ 29. Finance and ways and means committees continued during recess.—For the purpose of more effectively carrying out the provisions of this article, the committee on finance appointed under the rules of the senate and the committee on ways and means appointed under the rules of the assembly shall continue during the recess of the legislature, and the chairman of the respective committees shall have the power to name sub-committees to perform such duties as they may prescribe in gathering information as to the financial needs of the various charitable institutions, state hospitals, state prisons and other departments, boards, bureaus, commissions, offices and institutions of the state. The members of such sub-committees so serving shall be paid their necessary traveling expenses in the performance of their duties. (*Added by L. 1916, ch. 130, in effect Apr. 5, 1916.*)

§ 30. Duties of clerks of finance and ways and means committees.—The clerk of the finance committee of the senate and the clerk of the ways and means committee of the assembly shall

1. Collect, compile and collate information and data relating to state departments, commissions, boards, bureaus, offices, institutions, public works and other subjects for which appropriations are made or sought.

2. Prepare and make available for the use of such committees tables showing appropriations made by the legislature from time to time and prepare and furnish when requested by such committees statistics and other information relating to such appropriations.

3. Procure, compile and make available for the use of such committees statistics as to the revenues of the state during the preceding year and the estimated revenues for the current and ensuing fiscal year.

4. File, preserve and maintain permanent records of information and data collected pursuant to this section, including correspondence in relation thereto.

5. Investigate and report on requests for appropriations and the needs therefor.

6. Aid either of such committees and the members thereof in making

any investigation which may be required or authorized by either of such committees or by the legislature and, when requested so to do, aid any other legislative committee in making investigations pertaining to expenditure of state funds.

7. Aid the finance committee of the senate and the ways and means committee of the assembly, when requested, in the preparation of the annual budget and meet and confer with the said committees for the purpose of assisting in the preparation, amendment and revision of bills appropriating state moneys and otherwise aid such committees or either of them in the performance of their duties.

8. For the purposes of this section, have access at all reasonable times to offices of state departments, commissions, boards, bureaus and offices, to institutions and to all public works of the state and they may, for the purpose of obtaining information as to the operations and the fiscal needs thereof, examine the books, papers and public records therein. Such state departments, commissions, boards, bureaus, offices and institutions shall through their proper officers or deputies furnish such data, information or statements as may be necessary for the proper exercise of their powers and duties and for the purpose of carrying into effect the provisions of this article. The clerks of the finance and ways and means committees in exercising the powers and performing the duties prescribed by this section may act jointly, or separately, as they deem advisable. All data and other information or statements collected by such clerks shall be accessible at all times to the inspection of the governor, or to a person designated by him for such purpose. (*Added by L. 1916, ch. 130, in effect Apr. 5, 1916.*)

§ 31. **Annual budget.**—The finance committee of the senate and the ways and means committee of the assembly, acting jointly or separately, shall annually prepare and submit to the respective houses, not later than March fifteenth, a budget containing a complete and detailed statement of all appropriations to be made out of moneys of the general fund in the state treasury for the support and maintenance of the government of the state and for all other purposes, which appropriations or any part thereof shall become available during the period ending with the ensuing fiscal year. Such budget shall specify the department, board, bureau, commission, office or institution under whose supervision or control the moneys to be so appropriated are to be expended and the purposes for which such appropriations are made. There shall be attached to and made a part of such budget an itemized and detailed estimate of the probable revenues of the state out of which the appropriations specified in such budget may be paid, and such budget shall include an estimate of the amount which it will be necessary to raise by a direct tax for the payment of such appropriations. Such budget may be accompanied by a statement containing such information and data as the committees may deem advisable to present. (*Added by L. 1916, ch. 130, in effect Apr. 5, 1916.*)

§ 32. **Appropriation bill; consideration by legislature.**—The respective committees shall present with the budget a single bill providing the appropriations contained therein. The appropriation bill thus reported shall be referred to the committee of the whole of the senate and shall be advanced to the order of second reading in the assembly, and shall remain before the committee of the whole of the senate and on the order of second reading in the assembly for its consideration at least five full legislative days, and on each of such days the bills shall be the special order of the day. While the bill is under consideration in the committee of the whole in the senate or on second reading in the assembly, the head of any department, office, board, bureau, commission or institution of the state, may, and when requested by a majority vote of either house, shall, appear and shall be heard and answer inquiries by members pertinent to the appropriation bill then under consideration. All meetings of either house for the consideration of the appropriation bill shall be open to the public. While the bill is before the committee of the whole of the senate or on the order of second reading in the assembly, it may be amended either by inserting additional items or by increasing, reducing or eliminating items; but on third reading no amendments, except to reduce or eliminate an item in the bill, shall be in order, except by unanimous consent. The bill when advanced to the order of third reading in either house shall be a special order of the day for at least three full legislative days. (*Added by L. 1916, ch. 130, in effect Apr. 5, 1916.*)

LETCHWORTH VILLAGE.

L. 1909, ch. 446, § 4 (B. C. & G.'s Consol. Laws, p. 3131).

§ 4. **Annual report.**—The board of managers shall make to the legislature in January of each year a detailed report with suitable suggestions and such other matter as may be required of them for the year ending on the thirtieth day of June preceding the date of such report. (*Amended by L. 1916, ch. 118, § 32, in effect Apr. 3, 1916.*)

LIEN LAW.

(L. 1909, ch. 38.)

§ 2. Definitions; lienor.—The term “lienor,” when used in this chapter, means any person having a lien upon property by virtue of its provisions, and includes his successor in interest.

Real property. The term “real property,” when used in this chapter, includes real estate, lands, tenements and hereditaments, corporeal and incorporeal, fixtures, and all bridges and trestle work, and structures connected therewith, erected for the use of railroads, and all oil or gas wells and structures and fixtures connected therewith, and any lease of oil lands or other right to operate for the production of oil or gas upon such lands, and the right of franchise granted by a municipal corporation for the use of the streets or public places thereof, and all structures placed thereon for the use of such right or franchise.

Owner. The term “owner,” when used in this chapter, includes the owner in fee of real property, or of a less estate therein, a lessee for a term of years, a vendee in possession under a contract for the purchase of such real property, and all persons having any right, title or interest in such real property, which may be sold under an execution in pursuance of the provisions of statutes relating to the enforcement of liens of judgment, and all persons having any right or franchise granted by a municipal corporation to use the streets and public places thereof, and any right, title or interest in and to such franchise. The purchaser of real property at a statutory or judicial sale shall be deemed the owner thereof from the time of such sale. If the purchaser at such sale fails to complete the purchase, pursuant to the terms of the sale, all liens created by his consent after such sale shall be a lien on any deposit made by him and not on the real property sold.

Improvement. The term “improvement,” when used in this chapter, includes the erection, alteration or repair of any structure upon, connected with, or beneath the surface of, any real property and any work done upon such property or materials furnished for its permanent improvement, and shall also include any work done or materials furnished in equipping any such structure with any chandeliers, brackets or other fixtures or apparatus for supplying gas or electric light and shall also include the drawing by an architect or engineer, of any plans or specifications which are used in connection with such improvement.

Public improvement. The term “public improvement,” when used in this chapter, means an improvement upon any real estate belonging to the state or a municipal corporation.

Contractor. The term “contractor,” when used in this chapter, means

a person who enters into a contract with the owner of real property for the improvement thereof, or with the state or a municipal corporation for a public improvement.

Subcontractor. The term "subcontractor," when used in this chapter, means a person who enters into a contract with a contractor for the improvement of such real property or such public improvement or with a person who has contracted with or through such contractor for the performance of his contract or any part thereof.

Laborer. The term "laborer," when used in this chapter, means any person who performs labor or services upon such improvement.

Material man. The term "material man," when used in this chapter, means any person who furnishes material for such improvement. (*Amended by L. 1914, ch. 506, and L. 1916, ch. 507, in effect July 1, 1916.*)

Material man.—One who furnishes a contractor with materials called for by the plans and specifications and by whom working drawings were submitted for approval, but who did not install the material nor perform any labor thereon after delivery, is a materialman. *Buhler v. New York Dock Co. (1915), 170 App. Div. 486, 156 N. Y. Supp. 457.*

§ 3. Mechanic's lien on real property.

Materials for which lien may be filed; material used in construction work but not incorporated therein which is partially destroyed by such use.—While a building plant together with tools, and their adjuncts, which are but instruments for accomplishing the work, which survive its completion and which are not used in the physical construction of the work, are not within the statute authorizing the filing of a mechanic's lien, the case is different, and a lien may be filed, as to materials which do come into physical use and contact and which are used in immediate connection with the work although neither permanently entering into it nor actually annihilated in the course of their use, but which, although remaining as physical substances after the work is completed, are, so far as their original form or condition is concerned, practically destroyed. Thus, a mechanic's lien may be filed for lumber which was cut up for building derricks, temporary trestles, fences, bracing, sheeting or sheathing, street flooring or decking, and steel "I" beams used for support. But no lien can be filed for lumber used for building offices and other temporary buildings, for constructing concrete molds, repairing cars, or otherwise used in the plant. *Gates & Co. v. Stevens Construction Co. (1915), 169 App. Div. 221, 154 N. Y. Supp. 605.*

A lien may be filed for "conduit rods" used for cleaning out electrical conduits after they were permanently installed. A lien may be filed for dynamite, fuses, connecting wire, batteries, etc., used in blasting operations if they were actually consumed and used up in the progress of the work. A lien may be filed for builders' hardware and similar supplies, except such as are used for temporary building repairs to plant and for steam drills. A lien may be filed for labor and materials in disconnecting the permanent gas mains and furnishing and installing temporary pipes for the distribution of gas to abutting properties during the construction of a railroad. *Gates & Co. v. Stevens Construction Co. (1915), 169 App. Div. 221, 154 N. Y. Supp. 605.*

Where an owner completes a building contract upon the abandonment of the work by the contractor, and materialmen and others asserting liens upon the difference between the cost of completion and the amount of the contract price unpaid establish the cost of completion solely by the certificates of the owner's architect,

§§ 4, 5. Extent of lien; lien for public improvements. L. 1916, ch. 507.

the lienors cannot, on appeal, impeach the certificate as to the payment of laborers' wages by the owner. Where an owner, who has completed a building after a default of the contractor, is charged with mechanic's liens on the cost of completion, he cannot assert a counterclaim for liquidated damages for the delay. Nor can charges for the services of the architect be considered part of the contract which the owner was completing on the contractor's account. *Buhler Co. v. New York Dock Co.* (1915), 170 App. Div. 486, 156 N. Y. Supp. 457.

§ 4. **Extent of lien.**—Such lien shall extend to the owner's right, title or interest in the real property and improvements, existing at the time of filing the notice of lien, except as hereinafter in this article provided. If an owner assigns his interest in such real property by a general assignment for the benefit of creditors, within thirty days prior to such filing, the lien shall extend to the interest thus assigned. If any part of the real property subjected to such lien be removed by the owner or by any other person, at any time before the discharge thereof, such removal shall not affect the rights of the lienor, either in respect to the remaining real property, or the part so removed. If labor is performed for, or materials furnished to, a contractor or subcontractor for an improvement, the lien shall not be for a sum greater than the sum earned and unpaid on the contract at the time of filing the notice of lien, and any sum subsequently earned thereon. In no case shall the owner be liable to pay by reason of all liens created pursuant to this article a sum greater than the value or agreed price of the labor and materials remaining unpaid, at the time of filing notices of such liens, except as hereinafter provided. (*Amended by L. 1916, ch. 507, in effect July 1, 1916.*)

Right of lienor to payment in full, although owner subsequently compelled to pay more than contract price to complete contract.—Where, at the time of the filing of a notice of lien for materials furnished, the contractor had earned and there was due him more than the amount of the lien, such lien should be allowed in full even though the owner was subsequently compelled to pay more than the contract price to complete the contract. This is especially true where the owner recognized the claim for the material and promised to pay it. *Upton Co. v. Flynn* (1915), 169 App. Div. 79, 154 N. Y. Supp. 724.

§ 5. **Liens under contracts for public improvements.**—A person performing labor for or furnishing materials to a contractor, his subcontractor or legal representative, for the construction of a public improvement pursuant to a contract by such contractor with the state or a municipal corporation, shall have a lien for the principal and interest of the value or agreed price of such labor or materials upon the moneys of the state or of such corporation applicable to the construction of such improvement, to the extent of the amount due or to become due on such contract, upon filing a notice of lien as prescribed in this article, except as hereinafter in this article provided. (*Repealed by L. 1911, ch. 450, re-enacted by L. 1911, ch. 873, and amended by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 9. **Contents of notice of lien.**—*Subd. 4 amended by L. 1916, ch. 507, in effect July 1, 1916, as follows:*

4. The labor performed or materials furnished and the agreed price or value thereof, or materials actually manufactured for but not delivered to the real property and the agreed price or value thereof.

Sufficiency of notice.—A notice of mechanic's lien is defective in failing to state the agreed price and values of materials furnished for the real property which is subject to the lien, where it groups in the notice materials furnished under several contracts for the improvement of separate pieces of real estate which were improved as independent operations. *Buhler Co. v. New York Dock Co.* (1915), 170 App. Div. 486, 156 N. Y. Supp. 457.

Subdivision 4, requiring that a notice of lien shall state the "materials furnished or to be furnished and the agreed price or value thereof," should be liberally construed, and a notice stating the kind of materials and their agreed price and value is not insufficient because the separate amount and value of each kind of material is not given. *New York County National Bank v. Wood* (1915), 169 App. Div. 817, 153 N. Y. Supp. 860.

§ 10. **Filing of notice.**—The notice of lien may be filed at any time during the progress of the work and the furnishing of the materials, or within four months after the completion of the contract, or the final performance of the work, or the final furnishing of the materials, dating from the last item of work performed or materials furnished. The notice of lien must be filed in the clerk's office of the county where the property is situated. If such property is situated in two or more counties, the notice of lien shall be filed in the office of the clerk of each of such counties. The county clerk of each county shall provide and keep a book to be called the "lien docket," which shall be suitably ruled in columns headed "owners," "lienors," "property," "amount," "time of filing," "proceedings had," in each of which he shall enter the particulars of the notice, properly belonging therein. The date, hour and minute of the filing of each notice of lien shall be entered in the proper column. The names of the owners shall be arranged in such book in alphabetical order. The validity of the lien and the right to file a notice thereof shall not be affected by the death of the owner before notice of the lien is filed. (*Amended by L. 1916, ch. 507, in effect July 1, 1916.*)

A mechanic's lien may be filed after bankruptcy petition has been filed by the corporation to which the goods were furnished. *Gates & Co. v. Stevens Construction Co.* (1915), 169 App. Div. 221, 154 N. Y. Supp. 605.

Filing of a notice of lien, provided for by this section, is a prerequisite to the enforcement of a lien under section 138 of the Public Health Law. *The Athina* (1916), 230 Fed. 1017.

§ 12. **Notice of lien on account of public improvements.**—At any time before the construction of a public improvement is completed and accepted by the senate or by the municipal corporation, and within thirty days after such completion and acceptance, a person performing work for or furnishing materials to a contractor, his subcontractor, assignee or legal representative, may file a notice of lien with the head of the department or bureau having charge of such construction and with the comptroller of

the state or with the financial officer of the municipal corporation, or other officer or person charged with the custody and disbursements of the state or corporate funds applicable to the contract under which the claim is made. The notice shall state the name and residence of the lienor, the name of the contractor or subcontractor for whom the labor was performed or materials furnished, the amount claimed to be due or to become due, the date when due, a description of the public improvement upon which the labor was performed and materials expended, the kind of labor performed and materials furnished, and materials actually manufactured for but not delivered to such public improvement, and give a general description of the contract pursuant to which such public improvement was constructed. If the lienor is a partnership or a corporation, the notice shall state the business address of such partnership or corporation, the names of the partners, and if a foreign corporation, its principal place of business within the state. If the name of the contractor or subcontractor is not known to the lienor, it may be so stated in the notice, and a failure to state correctly the name of the contractor or subcontractor shall not affect the validity of the lien. The notice must be verified by the lienor or his agent, to the effect that the statements therein contained are true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. The comptroller of the state or the financial officer of the municipal corporation or other officer or person with whom the notice is filed shall enter the same in a book provided for that purpose, to be called the "lien book." Such entry shall include the name and residence of the lienor, the name of the contractor or subcontractor, the amount of the lien and date of filing, and a brief designation of the contract under which the lien arose. (*Repealed by L. 1911, ch. 450, re-enacted by L. 1911, ch. 873, and amended by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 13. **Priority of liens.**—A lien for materials furnished or labor performed in the improvement of real property shall have priority over a conveyance, judgment or other claim against such property not recorded, docketed or filed at the time of the filing of the notice of such lien, except as hereinafter in this article provided; over advances made upon any mortgage or other encumbrance thereon after such filing, except as hereinafter in this article provided; and over the claim of a creditor who has not furnished materials or performed labor upon such property, if such property has been assigned by the owner by a general assignment for the benefit of creditors, within thirty days before the filing of such notice; and also over an attachment hereafter issued or a money judgment hereafter recovered upon a claim, which, in whole or in part, was not for materials furnished, labor performed or moneys advanced for the improvement of such real property; and over any claim or lien acquired in any proceedings upon such judgment. Such liens shall also have priority over advances made upon

L. 1916, ch. 507.

Assignments of contracts, etc.

§§ 15, 16.

a contract by an owner for an improvement of real property which contains an option to the contractor, his successor or assigns to purchase the property, if such advances were made after the time when the labor began or the first item of material was furnished, as stated in the notice of lien. If several buildings are erected, altered or repaired, or several pieces or parcels of real property are improved, under one contract, and there are conflicting liens thereon, each lienor shall have priority upon the particular building or premises where his labor is performed or his materials are used. Persons shall have priority according to the date of filing their respective liens except as hereinafter in this article provided; but in all cases laborers for daily or weekly wages shall have preference over all other claimants under this article, without reference to the time when such laborers shall have filed their notices of liens. (*Amended by L. 1916, ch. 507, in effect July 1, 1916.*)

Priority over conveyance.—A mechanic's lien duly filed takes priority over a prior conveyance of the realty if the same was not recorded before the filing of the lien. Hence, a lienor may consider the ownership of the original owner as continuing even though a grantee has taken possession under an unrecorded deed, and may name the original owner as defendant in a suit of foreclosure. *Reedy Elevator Co. v. Monok Co.* (1916), 171 App. Div. 653, 157 N. Y. Supp. 565.

§ 15. **Assignments of contracts and orders to be filed.**—No assignment of a contract for the performance of labor or the furnishing of materials for the improvement of real property or of the money or any part thereof due or to become due therefor, nor an order drawn by a contractor upon the owner of such real property for the payment of such money, nor an order drawn by a subcontractor upon a contractor or subcontractor for such payment, nor an order drawn by an owner upon the maker of a building loan, nor an assignment of moneys due or to grow due under a building loan contract, shall be valid, unless the contract (other than a building loan contract) or a statement containing the substance thereof and such assignment or a copy of each or a copy of such order, be filed within ten days after the date of such assignment of contract, or such assignment of money, or such order, in the office of the county clerk of the county wherein the real property improved or to be improved is situated, and in case of a contract with a municipal corporation, also with the comptroller or chief fiscal officer thereof, and such contract, assignment or order shall have effect and be enforceable from the time of such filing, and no such assignment or order shall have any validity until the same shall have been so filed. Such clerk shall enter the facts relating to such assignment or order in the "lien docket" or in another book provided by him for such purpose. (*Amended by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 16. **Assignment of contracts and orders for public improvement to be filed.**—No assignment of a contract for the performance of labor or the furnishing of materials for a public improvement, or of the money, or any

part thereof, due, or to become due, therefor, nor an order drawn by the contractor or subcontractor upon the municipal corporation, or the head of the department or bureau having charge of the construction of such public improvement, or the financial officer of the municipal corporation, or other officer or person charged with the custody and disbursement of the corporate funds applicable to the contract for such public improvement, shall be valid unless such assignment or order, or a copy thereof, be filed within ten days after the date of such assignment of contract, or such assignment of money, or such order, with the head of the department or bureau having charge of such construction, and with the financial officer of the municipal corporation or other officer or person charged with the custody and disbursement of the corporate funds applicable to the contract for such public improvement, and such assignment or order shall have effect and be enforceable from the time of such filing, and no such assignment or order shall have any validity until the same shall have been so filed. The financial officer of the municipal corporation, or other officer or person with whom the assignment order, or copy thereof, is filed, shall enter the facts relating to the same in the lien book or other book provided for such purpose. (*Repealed by L. 1911, ch. 450, re-enacted by L. 1911, ch. 873, and amended by L. 1916, ch. 507, in effect July 1, 1916.*)

Assignment of right to compensation for work on public building.—In an action to foreclose certain mechanic' liens against money due under a contract for the improvement of certain rooms in the assembly chamber in the State Capitol it appeared that the contractor had assigned to defendant bank, as security for loans for the prosecution of the work to be done under said contract, its right to compensation thereunder and that said assignment consented to by the governor and the speaker of the house was filed with the state comptroller as provided by section 16 of the Lien Law prior to the filing of the notices of lien by plaintiff, a subcontractor, or any other notices of lien, all of which had been filed in both the state comptroller's office and the state architect's office. It further appeared that the assignment was executed in duplicate and taken by the president of the contracting company to the office of the state architect and examined by his assistant secretary who told said president that one of the duplicates should be filed with the state comptroller, and instead of keeping the other duplicate, after having it in his possession for several hours, the assistant secretary handed it back to said president who took it away with him. *Held*, that the advantage and security provided by the contractor in good faith and relied upon by the bank under which it had made loans should not be destroyed by holding that the assignment to it was invalid because it was not kept and retained in the office of the state architect. *General Fireproofing Co. v. Keepsdry Construction Co.* (1916), 93 Misc. 635, N. Y. Supp.

§ 17. **Duration of lien.**—No lien specified in this article shall be a lien for a longer period than one year after the notice of lien has been filed, unless within that time an action is commenced to foreclose the lien, and a notice of the pendency of such action, whether in a court of record or in a court not of record, is filed with the county clerk of the county in which the notice of lien is filed, containing the names of the parties to the action,

L. 1916, ch. 507.

Duration of lien for public improvement.

§ 18.

the object of the action, a brief description of the real property affected thereby, and the time of filing the notice of lien; or unless an order be granted within one year from the filing of such notice by a court of record or a judge or justice thereof, continuing such lien, and such lien shall be redocketed as of the date of granting such order and a statement made that such lien is continued by virtue of such order. No lien shall be continued by such order for more than one year from the granting thereof, but a new order and entry may be made in each successive year. If a lienor is made a party defendant in an action to enforce another lien, and the plaintiff or such defendant has filed a notice of the pendency of the action within the time prescribed in this section, the lien of such defendant is thereby continued. Such action shall be deemed an action to enforce the lien of such defendant lienor. The failure to file a notice of pendency of action shall not abate the action as to any person liable for the payment of the debt specified in the notice of lien, and the action may be prosecuted to judgment against such person. The provisions of this section in regard to continuing liens shall apply to liens discharged by deposit or by order on the filing of an undertaking. Where a lien is discharged by deposit or by order, a notice of pendency of action shall not be filed. (*Amended by L. 1916, ch. 507, in effect July 1, 1916.*)

Renewal of lien by order of court; redocketing.—In an action brought to foreclose a mechanic's lien, the plaintiff's assignors filed their notice of lien and the lien was entered in the docket. Before the expiration of the year it was redocketed and continued for a second year and a short time before the expiration of that year an order was made by the court under this section that it be continued for another year. This order was filed with the county clerk, but by reason of failure to pay the clerk's fee it was not redocketed. A few months later the omission was discovered and plaintiff procured an *ex parte* order that on payment of the fee the lien be redocketed *nunc pro tunc*. This order was vacated and the order vacating it affirmed in the Appellate Division and this court. No rights of third parties have intervened and no prejudice or loss is shown to have been suffered by the owner. It was held, that the docketing or redocketing is not a condition of the creation or continuance of the lien but is the act of the clerk and its function is notice; that, therefore, the lien exists; it came into being when the notice was filed, and was continued by the filing of the order, and since no loss has been suffered through the plaintiff's omission to cause its entry in the docket, it is valid and enforceable. *Manton v. Brooklyn & Flatbush Realty Co.* (1916), 217 N. Y. 284, revg. 160 App. Div. 783, 145 N. Y. Supp. 996.

Sufficiency of allegations as to renewal.—A complaint in an action to foreclose a mechanic's lien which was filed April 1, 1913, which alleges that heretofore and on the 31st day of March, 1914, by an order of the court duly made, said lien was duly continued for a period of one year from the date of granting said order, which order was duly entered on that date in the office of the county clerk and said clerk was therein and thereby directed to redocket such lien as of the date of the granting of the order, sufficiently alleges a redocketing and a renewal of the lien in compliance with this section. *Schneider Co. v. Aetna Accident & Liability Co.* (1915), 169 App. Div. 584, 155 N. Y. Supp. 471.

§ 18. Duration of lien under contract for a public improvement.—If

the lien is for labor done or materials furnished for a public improvement, it shall not continue for a longer period than three months from the time of filing the notice of such lien, unless an action is commenced to foreclose such lien within that time, and a notice of the pendency of such action is filed with the comptroller of the state or the financial officer of the municipal corporation with whom the notice of such lien was filed, or unless an order be made by a court of record, continuing such lien, and a new docket be made stating such fact. And the supreme court of this state, or any justice thereof, or the county court of the county in which such lien was filed, or the county judge of such county, are hereby authorized to make an order continuing any such liens for a period not exceeding six months, upon the application of a lienor upon such affidavits or evidence as in the opinion of such court or judge shall be deemed sufficient. Nothing in this section contained, however, shall prevent any such court or judge from making a new order continuing such lien in each succeeding six months, if in the discretion of such court or judge the same shall be deemed just and equitable. If a lienor be made a party defendant in an action to enforce another lien, and the plaintiff or such defendant has filed a notice of the pendency of the action within the time prescribed in this section, the lien of such defendant is thereby continued. The provisions of this section in regard to continuing liens shall apply to liens discharged by deposit or by order on the filing of an undertaking, but in such cases no re-docketing shall be necessary, but on the original docket an entry shall be made of the continuance by such order. This section is hereby declared to be a remedial statute and is to be construed liberally to secure the beneficial interests and purposes thereof. (*Repealed by L. 1911, ch. 450, re-enacted by L. 1911, ch. 873, and amended by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 19. Discharge of lien generally.—A lien other than a lien for labor performed or materials furnished for a public improvement specified in this article, may be discharged as follows:

1. By the certificate of the lienor, duly acknowledged or proved and filed in the office where the notice of lien is filed, stating that the lien is satisfied and may be discharged.

2. By failure to begin an action to foreclose such lien or to secure an order continuing it, within one year from the time of filing the notice of lien, unless an action be begun within the same period to foreclose a mortgage or another mechanic's lien upon the same property or any part thereof and a notice of pendency of such action is filed according to law.

3. By order of the court vacating or cancelling such lien of record, for neglect of the lienor to prosecute the same, granted pursuant to section fifty-nine of this chapter.

4. Either before or after the beginning of an action by the owner or contractor executing an undertaking with two or more sufficient sureties,

who shall be freeholders, to the clerk of the county where the premises are situated, in such sums as the court or a judge or justice thereof may direct, not less than the amount claimed in the notice of lien conditioned for the payment of any judgment which may be rendered against the property for the enforcement of the lien. The sureties must together justify in at least double the sum named in the undertaking. A copy of the undertaking, with notice that the sureties will justify before the court, or a judge or justice thereof, at the time and place therein mentioned, must be served upon the lienor or his attorney, not less than five days before such time. Upon the approval of the undertaking by the court, judge or justice an order shall be made by such court, judge or justice discharging such lien. The execution of any such bond or undertaking by any fidelity or surety company authorized by the laws of this state to transact business, shall be equivalent to the execution of said bond or undertaking by two sureties; and where a certificate of solvency has been issued by the superintendent of insurance under the provisions of section one hundred and eighty-one of the insurance law, and has not been revoked, no justification or notice thereof shall be necessary, and in such case a copy of the undertaking and notice of the application for an order to discharge the lien must be served upon the lienor or his attorney not less than two days before such application for such order is made. Any such company may execute any such bond or undertaking as surety by the hand of its officers, or attorney, duly authorized thereto by resolution of its board of directors, a certified copy of which resolution, under the seal of said company, shall be filed with each bond or undertaking. If the lienor cannot be found, or does not appear by attorney, such service may be made by leaving a copy of said undertaking and notice at the lienor's place of residence, or if a corporation at its principal place of business within the state as stated in the notice of lien, with a person of suitable age and discretion therein, or if the house of his abode or its place of business is not stated in said notice of lien and is not known, then in such manner as the court may direct. The premises, if any, described in the notice of lien as the lienor's residence or place of business shall be deemed to be his said residence or its place of business for the purposes of said service at the time thereof, unless it is shown affirmatively that the person serving the papers or directing the service had knowledge to the contrary. (*Amended by L. 1909, chs. 240, 427, and L. 1916, ch. 507, in effect July 1, 1916.*)

§ 21. Discharge of lien for public improvement.—*Subd. 5, amended by L. 1916, ch. 507, in effect July 1, 1916, as follows:*

5. Either before or after the beginning of an action by a contractor executing an undertaking with two or more sufficient sureties, who shall be freeholders, to the state or the municipal corporation with which the notice of lien is filed, in such sums as the court or a judge or justice thereof

may direct, not less than the amount claimed in the notice of lien, conditioned for the payment of any judgment which may be recovered in an action to enforce the lien. The sureties must together justify in at least double the sum named in the undertaking. A copy of the undertaking with notice that the sureties will justify before the court or a judge or justice thereof at the time and place therein mentioned must be served upon the lienor, not less than five days before such time. If the lienor cannot be found, such service may be made as prescribed in subdivision four of section nineteen of this article. Upon the approval of the undertaking by the court, judge or justice, an order shall be made discharging such lien. The execution of such undertaking by any fidelity or surety company authorized by the laws of this state to transact business shall be equivalent to the execution of such an undertaking by two sureties, and where a certificate of solvency has been issued by the superintendent of insurance under the provisions of section one hundred and eighty-one of the insurance law and has not been revoked, no justification or notice thereof shall be necessary, and in such case a copy of the undertaking and notice of the application for an order to discharge the lien must be served upon the lienor, or his attorney, not less than two days before such application for such order is made. Any such company may execute such undertaking as surety by the hand of its officers or attorney duly authorized thereto by resolution of its board of directors, a certified copy of which resolution under the seal of such company, shall be filed with each undertaking. Except as otherwise provided herein the provisions of article five of title six of chapter eight of the code of civil procedure are applicable to an undertaking given for the discharge of a lien on account of public improvements. If the lienor cannot be found or does not appear by attorney then such service may be made as prescribed in subdivision four of section nineteen of this chapter for the service of an undertaking with notice of justification of sureties. (*Section repealed by L. 1911, ch. 450, re-enacted by L. 1911, ch. 873, amended by L. 1914, ch. 266, and subd. amended by L. 1916, ch. 507, in effect July 1, 1916.*)

Presumption as to ownership of deposit.—The mere fact that subdivision 4 provides that a lien may be discharged "by the contractor depositing money" raises nothing but a rebuttable presumption that said money belongs to the contractor. *Harrigan v. Prendergast* (1916), 94 Misc. 151, 157 N. Y. Supp. 1086.

§ 22. Building loan contract.—A contract for a building loan, either with or without the sale of land, and any modification thereof, must be in writing and duly acknowledged, and within ten days after its execution be filed in the office of the clerk of the county in which any part of the land is situated, and the same shall not be filed in the register's office of any county. If not so filed the interest of each party to such contract in the real property affected thereby, is subject to the lien and claim

L. 1916, ch. 507.

Priority of liens for public improvements.

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of a person who shall thereafter file a notice of lien under this chapter. A modification of such contract shall not affect or impair the right or interest of a person, who, previous to the filing of such modification had furnished or contracted to furnish materials, or had performed or contracted to perform labor for the improvement of real property, but such right or interest shall be determined by the original contract. The county clerk is entitled to a fee of twenty cents for filing such a contract or modification. Such contracts and modifications thereof shall be indexed in a book provided for that purpose, in the alphabetical order of the names of the persons to whom such loans shall be made. No assignment of the moneys due or to become due under a contract for a building loan, under the provisions of section twenty-six of this article, nor any payment to the holders of such assignment, shall be or be construed to be a modification of a contract for a building loan within the meaning of this section, and the execution and delivery of a bond and mortgage, under the provisions of section twenty-six of this article, or payments thereunder, shall not be or be construed to be the making of a contract for a building loan within the meaning of this section. (*Amended by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 25. **Priority of liens for public improvements.**—Persons having liens under contracts for public improvements shall have priority according to the date of filing their respective liens, except as in this article hereinafter provided, but in all cases laborers for daily or weekly wages shall have preference over all other lienors having liens arising under the same contracts pursuant to this article, without reference to the time when such laborers shall have filed their notice of lien. All liens shall have priority over advances made after the filing thereof, upon any assignment of the moneys, or any part thereof, due or to become due under such contract, or upon any order drawn by the contractor for the payment of such moneys, or any part thereof; but this provision shall not relate to advances made under an assignment to one or more persons or a corporation as trustee or trustees to which approval has been given as provided in section twenty-seven of this chapter. (*Repealed by L. 1911, ch. 450, re-enacted by L. 1911, ch. 873, and amended by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 26. **Subordination of liens after agreement with owner.**—In case an owner of real property shall execute to one or more persons, or a corporation, as trustee or trustees, a bond and mortgage affecting such property in whole or in part, or an assignment of the moneys due or to become due under a contract for a building loan in relation to such property, and in case such mortgage, if any, shall be recorded in the office of the register of the county where such real property is situated, or if such county has no register then in the office of the clerk of such county, and in case such assignment, if any, shall be filed in the office of the clerk of the county where such real property is situated; and in case lienors having mechanic's

liens against said real property, or any part thereof, filed up to and not later than fifteen days after the recording of such mortgage or the filing of such assignment, and which liens have not been discharged as in this article provided, shall, to the extent of at least seventy-five per centum of the aggregate amount for which such liens have been so filed, approve such bond and mortgage, if any, and such assignment, if any, by an instrument or instruments in writing, duly acknowledged and filed in the office of such county clerk, then all mechanic's liens affecting such property or any part thereof, whether theretofore or thereafter filed and which have not been discharged as in this article provided, shall be subordinate to the lien of such trust bond and mortgage to the extent of the aggregate amount of all certificates of interest therein issued by such trustee or trustees, or their successors, for moneys loaned, materials furnished, labor performed and any other indebtedness incurred after said trust mortgage shall have been recorded, and for expenses in connection with said trust mortgage, and shall also be subordinate to the lien of the bond and mortgage given to secure the amount agreed to be advanced under such contract for a building loan to the extent of the amount which shall be advanced by the holder of such bond and mortgage to the trustee or trustees, or their successors, under such assignment and from the date of the filing of such approval the respective mechanics' lienors, except those whose liens have been discharged as in this article provided, shall have no priority over each other with respect of their several liens, and their liens shall thenceforth be of equal priority, except that from the date of the filing of such approval all liens filed subsequent to the day preceding the day on which is commenced a trial in a court of record of an action to foreclose or enforce a mechanic's lien affecting such real property, shall be subordinate to the mechanics' liens filed prior thereto. The provisions of this section shall apply to all bonds and mortgages and all assignments of moneys due, or to become due under contracts for building loans, executed by such owner, in like manner, and recorded or filed, from time to time as hereinbefore provided. In case of an assignment to trustees under the provisions of this section, the trustees and their successors shall be the agents of the assignor to receive and receipt for any and all sums advanced by the holder of the building loan bond and mortgage under the building loan contract and such assignment. No lienor shall have any priority over the bond and mortgage given to secure the money agreed to be advanced under a building loan contract or over the advances made thereunder, by reason of any act preceding the making and approval of such assignment. (*Added by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 27. Subordination of liens after agreement with contractor.—In case a contractor shall execute to one or more persons, or a corporation, as trustee or trustees, an assignment in writing of the moneys due and to grow due under his contract with the owner of real property, or with the state,

or with a municipal corporation, and in case such assignment is filed in the office of the clerk of the county where such real property is situated, or with the comptroller of the state, or with the financial officer of the municipal corporation; and in case lienors having mechanic's liens against said real property, or any part thereof, or upon the moneys of the state or of such municipal corporation applicable to the construction of the public improvement, and which liens are also against such contractor or any subcontractor under him, filed up to and not later than fifteen days after the filing of such assignment, and which liens have not been discharged as in this article provided, shall, to the extent of at least seventy-five per centum of the aggregate amount for which such liens have been so filed, approve such assignment by an instrument or instruments in writing, duly acknowledged, and filed in the office or offices where such assignment shall have been filed as hereinbefore provided, then all such mechanic's liens affecting such property or any part thereof, or such moneys of the state, or of such municipal corporation, whether theretofore or thereafter filed and which liens have not been discharged as in this article provided shall be subordinate to such assignment and from the date of the filing of such approval the respective mechanics' lienors, except those whose liens have been discharged as in this article provided, shall have no priority over each other with respect of their several liens and their liens shall thenceforth be of equal priority, except that from the date of the filing of such approval all liens filed subsequent to the day preceding the day on which is commenced a trial in a court of record of an action to foreclose or enforce a mechanic's lien affecting such real property or such public improvement, shall be subordinate to the mechanics' liens filed prior thereto. Such assignment, however, shall be valid only for an amount equal to the aggregate amount which may be paid or incurred by the trustee or trustees, or their successors, in completing such contract. The certificate in writing of such trustee or trustees or their successors, to the owner, or to the state, or to such municipal corporation, certifying the amount paid or incurred by him or them toward the completion of such contract shall be final and conclusive. (*Added by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 28. **Lien of certain judgments postponed.**—Upon the filing of the written instrument or instruments of approval under section twenty-six or twenty-seven of this article, the lien of all money judgments and attachments affecting such real property, or the moneys due under a contract, and all claims and liens acquired in any proceedings upon any money judgment, shall be subordinate in like manner and to like extent as provided in said sections, respectively, for the subordination of mechanic's liens, and in that case all money judgments recovered upon claims for materials furnished, labor performed or moneys advanced for the improvement of such real property or for the public improvement, shall thenceforth be of

equal priority with all mechanic's liens on such property, or on the moneys applicable to the construction of such public improvement, filed prior to the day on which is commenced a trial in a court of record of an action to foreclose or enforce a mechanic's lien affecting such real property or the moneys applicable to the construction of such public improvement; and any attachment issued or money judgment recovered upon a claim, which, in whole or in part, was not for materials furnished, labor performed or moneys advanced for the improvement of such real property or for the public improvement, shall be subordinate to all mechanic's liens thereon and shall also be subordinate to all judgments recovered upon claims for materials furnished, labor performed or moneys advanced for the improvement of such real property. (*Added by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 29. **Subordination of liens to subsequent mortgage.**—In case an owner of real property against which, or any part of which, mechanic's liens have been filed, desires to obtain a loan by executing and delivering a bond and mortgage affecting such real property, or any part thereof, as security therefor, and in case lienors having mechanic's liens against such real property, or any part thereof, filed prior to the recording of such mortgage, and which said liens have not been discharged as in this article provided, shall, to the extent of at least seventy-five per centum of the aggregate amount for which such liens have been so filed, by an instrument or instruments in writing, duly acknowledged, designate and authorize one or more persons to consent to the execution and delivery of such bond and mortgage, and in case the consent in writing, duly acknowledged, of such person or persons to the execution and delivery of such bond and mortgage shall be filed in the office of the clerk of the county where such real property is situated, together with such instrument or instruments of designation, then all mechanic's liens affecting such real property, or any part thereof, whether theretofore or thereafter filed, shall be subordinate to the lien of such bond and mortgage to the extent of the full amount which shall be advanced thereunder and from the date of the filing of such approval the respective mechanics' lienors, except those whose liens have been discharged as in this article provided, shall have no priority over each other with respect of their several liens, and their liens shall thenceforth be of equal priority, except that from the date of the filing of such approval all liens filed subsequent to the day preceding the day on which is commenced a trial in a court of record of an action to foreclose or enforce a mechanic's lien affecting such real property, shall be subordinate to the mechanics' liens filed prior thereto. In case such person or persons so designated and authorized shall so consent to the execution and delivery of such bond and mortgage but on condition that a sum of money be deposited with the clerk of such county, and such sum is so deposited, the county clerk, upon such payment, shall forthwith enter upon the lien docket, in-

L. 1916, ch. 507.

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§§ 30, 31.

dexed to the name of the owner, the facts relating to such payment. A deposit of money made as prescribed in this section shall be repaid to such owner or his assignee upon the discharge or release of all mechanic's liens, judgments and attachments against the property. All deposits of money made as provided in this section shall be considered as paid into court and shall be subject to the provisions of the code of civil procedure relative to the payment of money into court and the surrender of such money by order of the court. The court shall in any action brought to foreclose any of such liens, or in any action brought to recover such deposit or any part thereof, direct the payment of such sum so deposited to the persons whose mechanic's liens, judgments, or claims secured by attachment shall have been established on the trial and the amount so paid shall be credited upon such mechanic's liens, judgments and claims. Upon such filing of such consent, as hereinbefore provided, the lien of all judgments and attachments affecting such real property and all claims and liens acquired in any proceedings upon such judgments shall be subordinate in like manner and to like extent as hereinbefore in this section provided for the subordination of mechanic's liens, and in that case all judgments recovered upon, and attachments issued upon claims for materials furnished, labor performed or moneys advanced for the improvement of such real property shall thenceforth be of equal priority with all mechanic's liens on such property filed prior to the day on which is commenced a trial in a court of record of an action to foreclose or enforce a mechanic's lien affecting such real property; and any attachment issued or judgment recovered upon a claim, which, in whole or in part, is not for materials furnished, labor performed or moneys advanced for the improvement of such property shall be subordinate to all mechanic's liens thereon, and shall also be subordinate to all judgments recovered upon and attachments issued upon claims for materials furnished, labor performed or moneys advanced for the improvement of such real property. (*Added by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 30. Subordination of notices of lis pendens.—In case of subordination pursuant to the provisions of sections twenty-six, twenty-seven, twenty-eight or twenty-nine of this article all actions and proceedings upon such mechanic's liens and all notices of pendency of actions in any action brought to foreclose the same and all proceedings upon judgments and attachments, shall be subordinate in like manner and to like extent as provided in said sections, respectively, for the subordination of mechanic's liens, judgments and attachments. (*Added by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 31. Discharge of liens on sale of real property.—In case an owner of real property against which, or any part of which, mechanic's liens have been filed, desires to convey or transfer an interest in such real property or any part thereof, and in case lienors having mechanic's liens against

such real property, or any part thereof, filed prior to the making of the deposit hereinafter in this section mentioned, and which said liens have not been discharged as in this article provided, shall, to the extent of at least seventy-five per centum of the aggregate amount for which such liens have been so filed, by an instrument or instruments in writing, duly acknowledged, designate and authorize one or more persons to consent to the execution and delivery of a deed or deeds conveying said real property or any part thereof, and in case the consent in writing, duly acknowledged, of such person or persons to the execution and delivery of such deed or deeds, and which said consent shall be conditioned for the deposit of a specified sum of money with the clerk of such county, shall be filed in the office of the clerk of the county where such real property is situated, together with such instrument or instruments of designation, then on the deposit of such specified sum with such county clerk all mechanic's liens, judgments and attachments, and all claims and liens acquired in any proceeding upon such judgments or under such attachments against such real property shall from the time of such deposit cease to be liens or encumbrances upon such real property, and such real property shall thenceforth be free and discharged from the same, and the same shall thenceforth be liens upon such sum so deposited and from the date of the filing of such approval the respective mechanics' lienors, except those whose liens have been discharged as in this article provided, shall have no priority over each other with respect of their several liens, and their liens shall thenceforth be of equal priority, except that from the date of the filing of such approval all liens filed subsequent to the day preceding the day on which is commenced a trial in a court of record of an action to foreclose or enforce a mechanic's lien affecting such real property, shall be subordinate to the mechanics' liens filed prior thereto, and said county clerk upon such deposit being made shall forthwith enter upon the lien docket indexed to the name of such owner the facts relating to such deposit. A deposit of money made as prescribed in this section shall be repaid to such owner or his assignee upon the discharge or release of all such mechanic's liens, judgments and attachments. All deposits of money made as provided in this section shall be considered as paid into court and shall be subject to the provisions of the code of civil procedure relative to the payment of money into court and the surrender of such money by order of the court. The court shall in any action brought to foreclose any of such liens or in any action brought to recover such deposit or any part thereof, direct the payment of such sum so deposited to the persons whose mechanic's liens, judgments, or claims secured by attachment shall have been established upon the trial, and the amount so paid shall be credited upon such mechanic's liens, judgments and claims. Upon such deposit being made as hereinbefore provided the lien of all judgments and attachments affecting such real property, and all claims and liens acquired in any proceedings upon such judgments or under attachments shall be liens upon such deposit of

L. 1916, ch. 507.

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§§ 32, 33, 56.

equal priority with such mechanic's liens, except that all judgments recovered upon and attachments issued upon a claim which, in whole or in part, is not for materials furnished, labor performed or moneys advanced for the improvement of such real property, shall be subordinate as a lien upon such sum so deposited to all mechanic's liens thereon, and shall also be subordinate to all judgments recovered upon and attachments issued upon claims for materials furnished, labor performed or moneys advanced for the improvement of such real property. In case such consent shall be conditioned also for the giving to one or more persons or a corporation as trustee or trustees any other property real or personal then any cash thereafter from time to time tendered by such trustee or trustees to such county clerk shall be received and held by such county clerk as though the same were part of the specified sum of money for the deposit of which such consent was conditioned, and for the same purposes and subject to the same provisions as in this section provided therefor. (*Added by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 32. **Certain liens and claims not to be affected.**—The amendments contained in this act except section sixty-four shall not apply to mechanic's liens, attachments, judgments, or to claims or liens acquired in any action or proceeding upon such mechanic's liens, attachments or judgments, filed, docketed, entered or obtained prior to the date when this article, as amended, takes effect. (*Added by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 33. **Certain sections not to apply to laborers' liens.**—None of the provisions contained in sections twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty-one of this article shall apply to liens of laborers for daily or weekly wages. (*Added by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 56. **Preference over contractors.**—When a laborer, subcontractor or material man shall perform labor or furnish materials for an improvement of real property or for a public improvement, for which he is entitled to a mechanic's lien, the amount due to him shall be paid out of the proceeds of the sale of such property or out of the moneys of the state or municipal corporation applicable to the construction of the public improvement, under any judgment rendered pursuant to this article, in the order of priority of his lien, before any part of such proceeds is paid to the person for whom he has performed such labor or furnished such materials. If several notices of lien are filed for the same claim, as where the contractor has filed a notice of lien, for the services of his workmen, and the workmen have also filed notices of lien, the judgment shall provide for but one payment of the claim which shall be paid to the parties entitled thereto in the order of priority. Payment voluntarily made upon any claim filed as a lien shall not impair or diminish the lien of any person except the person to whom the payment was made. (*Amended by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 62. **Bringing in new parties.**—Where a lienor who has filed a lien after the commencement of an action and at any time up to and including the day preceding the day on which is commenced the trial in a court of record of an action to foreclose or enforce a mechanic's lien, makes application to be made a party, the court must direct him to be brought in by amendment or, if the application be made by any other person to make such lienor a party, the court may in its discretion direct him to be brought in by amendment. The order to be entered on such application shall provide as to the time and manner of service of his pleading and the court shall in such order direct the pleadings, papers and proceedings of the other several parties, shall be deemed amended, so as not to require the making or serving of papers other than said order to accomplish the amendment, and that the allegations in the answer of the lienor brought in shall, for the purposes of the action, be deemed denied by the other parties to the action. The action shall be so conducted by the court as not to cause substantially any delay in the action being tried by reason of such lienor being made a party. The bringing in of such party shall be without prejudice to any of the proceedings had and if the action be on any calendar of any court it shall retain its place on such calendar and the note of issue and the notices of trial under which such case shall be on any calendar shall not be affected, nor any further notice of trial required by reason of such lienor being made a party. (*Added by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 63. **Service of answer on state or municipal corporation.**—In an action to foreclose a lien for a public improvement each defendant named in the original summons shall within forty days after the service of the complaint on him serve upon the state or municipal corporation, a copy of his answer or demurrer. When the city of New York is a party such service shall be made on the corporation counsel. (*Added by L. 1916, ch. 507, in effect July 1, 1916.*)

§ 64. **Award of personal judgment by court or referee.**—A court or referee in any action heretofore or hereafter brought may at any time award a money judgment in favor of any party. This shall not preclude the rendition of other judgments in the action. Any payment made on account of either judgment in favor of a party shall be credited on the other judgment. (*Added by L. 1916, ch. 507, in effect July 1, 1916.*)

ARTICLE 7.

(Article amended by L. 1916, ch. 301, in effect Apr. 25, 1916.)

LIENS FOR SERVICE OF STALLIONS OR BULLS.

Section 160. Lien on mare and foal, or on cow and calf.

161. Statement and certificate.

162. Copy of statement and certificate to be posted.

163. Penalty.

L. 1916, ch. 301.

Lien for service of stallion or bull.

§§ 160-163, 230.

§ 160. **Lien on mare and foal, or on cow and calf.**—On complying with the provisions of this article, the owner of a stallion or bull shall have a lien on each mare or cow served together with the foal or calf of such mare or cow from such service, for the amount agreed on at the time of service, or if no agreement was made, for the amount specified in the statement hereinafter required to be filed, if within fifteen months after such service he files a notice of such lien in the same manner and place as chattel mortgages are required by law to be filed. Such notice of lien shall be in writing, specifying the person against whom the claim is made, the amount of the same and a description of the property upon which the lien is claimed, and such lien shall terminate at the end of eighteen months from the date of such filing, unless within that time an action is commenced for the enforcement thereof, as provided in sections two hundred and six to two hundred and ten, both inclusive, of this chapter, for the foreclosure of a lien on chattels. (*Amended by L. 1916, ch. 301, in effect Apr. 25, 1916.*)

§ 161. **Statement and certificate.**—A person having the custody or control of a stallion or bull and charging a fee for his services, shall, before advertising or offering such services to the public, file with the clerk of the county in which he resides or in which such stallion or bull is kept for service, a written statement giving the name, age, description and pedigree, if known, and if not, stating that the same is unknown, of such stallion or bull and the terms and conditions on which he will serve. On filing such statement, the county clerk shall record the same in a book provided for that purpose and issue a certificate to such person, that such statement has been so filed and recorded. He shall be entitled to receive ten cents per folio for recording such statement and for such certificate. (*Amended by L. 1916, ch. 301, in effect Apr. 25, 1916.*)

§ 162. **Copy of statement and certificate to be posted.**—The person having the custody and control of such stallion or bull, shall post a written or printed copy of such statement and certificate in a conspicuous place in each locality in which said stallion or bull is kept for service. (*Amended by L. 1916, ch. 301, in effect Apr. 25, 1916.*)

§ 163. **Penalty.**—A person who neglects or refuses to file and post such statement as required in this article, or falsely states the pedigree of such stallion or bull in such statement, forfeits all fees for the services of such stallion or bull and is liable to a person deceived or defrauded thereby for the damages sustained. (*Amended by L. 1916, ch. 301, in effect Apr. 25, 1916.*)

§ 180. **Artisan's lien on personal property.**

Lien on automobile.—*Milgrim v. Coon* (1915), 93 Misc. 78, 156 N. Y. Supp. 544.

§ 230. **Chattel mortgages to be filed.**—Every mortgage or conveyance intended to operate as a mortgage of goods and chattels or of any canal

§§ 230, 235.

Chattel mortgage to be filed.

L. 1916, ch. 348.

boat, steam-tug, scow or other craft, or the appurtenances thereto, navigating the canals of the state, which is not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things mortgaged, is absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage, or a true copy thereof, is filed as directed in this article. This article shall not apply to agreements creating liens upon merchandise or the proceeds thereof for the purpose of securing the repayment of loans or advances made or to be made upon the security of said merchandise and the payment of commissions or other charges provided for by such agreement, where the conditions specified in section forty-five of the personal property law are complied with, nor shall this article apply to the mortgage or pledge of or lien upon stocks or bonds mortgaged or pledged to secure payment of a loan, which stocks or bonds, by the terms of a written instrument creating such mortgage, pledge or lien and setting forth the conditions of such loan, are to be delivered to the lender on the day such loan is made, and every such mortgage, pledge or lien, of such securities, shall be valid as against creditors of such mortgagor or pledgor, provided, however, that if such securities are not delivered to the pledgee or mortgagee on the day such loan is made, the mortgage, lien or pledge therein intended to be created shall be absolutely void and of no effect as against the creditors of such mortgagor, pledgor or lienor unless such instrument, or a true copy thereof, is filed as directed in this article, on the day following the making of such loan, and provided also that every such mortgage, pledge or lien shall be absolutely void as against purchasers, pledgees or mortgagees in good faith of such stocks or bonds provided such stocks or bonds are delivered to such purchaser, pledgee or mortgagee at the time of such purchase, pledge or mortgage. (*Amended by L. 1911, ch. 326, and L. 1916, ch. 348, in effect Apr. 27, 1916.*)

When bill of sale filed pursuant to Lien Law operates as chattel mortgage.—A bill of sale absolute on its face, but intended to operate as a mortgage of the goods and chattels therein mentioned and described, when filed pursuant to the provisions of article 10 of the Lien Law, is notice to a subsequent purchaser in good faith, although there is nothing in the instrument itself expressing such intention and there is not filed therewith any other or further paper showing that the sale was intended to operate as a mortgage of goods and chattels. *Sheldon v. McFee* (1916), 216 N. Y. 618, affg. 160 App. Div. 361, 145 N. Y. Supp. 624.

§ 235. Chattel mortgage invalid after one year, unless statement is filed.

Failure to renew mortgage.—*Protter v. Lovell* (1915), 91 Misc. 417, 155 N. Y. Supp. 275.

LIQUOR TAX LAW.

(L. 1909, ch. 39.)

§ 3. State commissioner of excise; duties; necessary party to certain litigation.

The duties of the State Commissioner of Excise are purely ministerial, and on a proceeding for the cancellation of a liquor tax certificate he has no authority or jurisdiction to pass upon the equitable or contract rights in reference to a certificate not affecting the legal title. The mere issuance of a liquor tax certificate which is subsequently rendered void under the statute does not estop the Commissioner from proceeding to revoke the same. *Matter of Green* (1916), 171 App. Div. 583, 157 N. Y. Supp. 736.

§ 6. Special deputy commissioners in certain localities; special agents to act in certain cases.—The state commissioner of excise shall appoint special deputy commissioners of excise as follows: one for the boroughs of Manhattan and the Bronx; one for the borough of Brooklyn; one for the borough of Queens; one for the borough of Richmond; one for the county of Westchester; one for the county of Erie; one for the county of Monroe; one for the county of Albany; one for the county of Oneida; one for the county of Onondaga; one for the county of Rensselaer; one for the county of Schenectady; one for the county of Niagara; one for the county of Orange; one for the county of Broome; and one for the county of Nassau. Each of such special deputy commissioners and their successors in office shall take and subscribe the constitutional oath of office, and execute and file in the office of the state comptroller a bond to the people of the state in such sum and with such sureties as shall be approved by the state commissioner. They shall perform such duties as may be required by the commissioner, or as may be provided by law. The state commissioner may remove any special deputy commissioner of excise, and shall in like manner appoint his successor, and may appoint in the offices of each of such deputies and their successors such clerical force as he may deem necessary or as may be provided for by law. The special deputy commissioners shall each receive an annual salary, payable in equal monthly instalments, as follows: For the boroughs of Manhattan and the Bronx, five thousand dollars; for the borough of Brooklyn, three thousand seven hundred and fifty dollars; for the borough of Queens, two thousand five hundred dollars; for the borough of Richmond, two thousand dollars; for the county of Westchester, two thousand five hundred dollars; for the county of Erie, three thousand dollars; for the county of Monroe, two thousand five hundred dollars; for the county of Albany, two thousand dollars; for the county of Oneida, one thousand five hundred dollars; for the county of Onondaga, two thousand dollars; for the county of Rensselaer, one thou-

sand five hundred dollars; for the county of Schenectady, one thousand five hundred dollars; for the county of Niagara, one thousand five hundred dollars; for the county of Orange, two thousand dollars; for the county of Nassau, two thousand dollars; and for the county of Broome, one thousand five hundred dollars. Upon each of such special deputy commissioners, and upon any special agent designated by the state commissioner of excise to perform the duties of a special deputy commissioner or a county treasurer, as is hereinafter provided, are devolved all the powers, duties and obligations in the respective county or borough for which he shall be appointed as are possessed by and vested in county treasurers of other counties of this state under and by virtue of the provisions of this chapter. The salaries and expenses of each of such special deputy commissioners of excise, and such office rent and clerical help, office furniture, fixtures and equipment as are authorized and audited by the state commissioner of excise and for which appropriations are made, shall be paid as follows: one-half thereof by the treasurer of the state of New York, upon the warrant of the comptroller; and one-half thereof by the treasurer of the county or the fiscal officer of the city in which such borough is included, upon the certificate of the state commissioner of excise. In case the office of any special deputy commissioner of excise or county treasurer shall become vacant, or if any special deputy commissioner or county treasurer shall become incapacitated or unable to perform his duties under this chapter, or shall neglect or refuse to perform any duty devolving on him thereunder, the state commissioner shall designate a special agent to act in the place and stead of such special deputy commissioner or county treasurer during such vacancy, disability or neglect, provided that such designation shall not be made where the power to appoint a deputy county treasurer exists, and where the county treasurer does not fail or neglect to appoint such deputy. The appointment of the special deputy commissioners hereinbefore provided for the counties of Westchester, Albany, Rensselaer, Schenectady, Oneida and Onondaga, shall not take effect until the expiration of the term of the county treasurer in office in each of said counties on the thirteenth day of May, nineteen hundred and seven. (*Amended by L. 1913, ch. 782, and L. 1916, ch. 122, in effect Apr. 3, 1916.*)

§ 8. Excise taxes upon the business of trafficking in liquors.—*Subds. 1 and 2 amended by L. 1916, ch. 416, in effect Oct. 1, 1916, as follows:*

1. Upon the business of trafficking in liquors to be drunk upon the premises where sold, or which are so drunk, whether in a hotel, restaurant, saloon, store, shop, booth or other place, or in any outbuildings, yard or garden appertaining thereto or connected therewith, there is assessed an excise tax to be paid by every person engaged in such traffic, and for each such place where such traffic is carried on by such person if the same be in a city or borough having by the last state census a population of fifteen hundred thousand or more, the sum of fifteen hundred dollars; if in a

L. 1916, ch. 416.

Excise taxes; rates.

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city or borough having by said census a population of less than fifteen hundred thousand, but more than five hundred thousand, the sum of twelve hundred and eighteen and one-half dollars; if in a city or borough having by said census a population of less than five hundred thousand, but more than fifty thousand, the sum of nine hundred and thirty-seven and one-half dollars; if in a city or village having by said census a population of less than fifty thousand, but more than ten thousand, the sum of six hundred and fifty-six dollars; if in a city or village having by said census a population of less than ten thousand, but more than five thousand, the sum of five hundred and sixty-two and one-half dollars; if in a village having by said census a population of less than five thousand, but more than twelve hundred, the sum of three hundred and seventy-five dollars; if in any other place, the sum of one hundred and eighty-seven and one-half dollars. The holder of a liquor tax certificate under this subdivision is entitled also to traffic in liquors as though he held a liquor tax certificate under subdivision two of this section, subject to the provisions of section thirteen of this chapter. (*Subd. amended by L. 1916, ch. 416, in effect Oct. 1, 1916.*)

L. 1916, ch. 416, § 7. This act shall take effect October first, nineteen hundred and sixteen, except that applications made before October first, nineteen hundred and sixteen, for liquor tax certificates to be issued as of October first, nineteen hundred and sixteen, and the amount and filing of the bonds therefor, shall be subject to the liquor tax law as amended by this act.

2. Upon the business of trafficking in liquors in quantities less than five wine gallons, no part of which shall be drunk on the premises where sold, or in any outbuilding, yard, booth or garden appertaining thereto or connected therewith, there is assessed an excise tax to be paid by every person engaged in such traffic, and for each such place where such traffic is carried on by such person, if the same be in a city or borough having by the last state census a population of fifteen hundred thousand or more, the sum of nine hundred and thirty-seven and one-half dollars; if in a city or borough having by the said census a population of less than fifteen hundred thousand, but more than five hundred thousand, the sum of seven hundred and fifty dollars; if in a city or borough having by said census a population of less than five hundred thousand, but more than fifty thousand, the sum of five hundred and sixty-two and one-half dollars; if in a city or village having by said census a population of less than fifty thousand, but more than ten thousand, the sum of three hundred and seventy-five dollars; if in a city or village having by said census a population of less than ten* thousand, but more than five thousand, the sum of one hundred and eighty-seven and one-half dollars; if in a village having by said census a population of less than five thousand, but more than twelve hundred, the sum of one hundred and forty and one-half dollars; if in any other place the sum of ninety-three and one-half dollars. The holder

* So in original.

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of a liquor tax certificate under this subdivision, who is a duly licensed pharmacist, and the corporation, association or copartnership of which he is a member is subject to the provisions of exception one of section thirty, and to the provisions of section thirteen of this chapter. (*Subd. amended by L. 1916, ch. 416, in effect Oct. 1, 1916.*)

Subd. 3, as amended by L. 1910, ch. 485, amended by L. 1916, ch. 416, in effect Oct. 1, 1916, as follows:

3. Upon the business of trafficking in liquors by a duly licensed pharmacist, which liquors can be sold only upon the written prescription of a regularly licensed physician, signed by such physician, which prescription shall state the date of the prescription, the name of the person for whom prescribed, and shall be preserved by the vendor, pasted in a book kept for that purpose, and be but once filled, and which liquors shall not be drunk on the premises where sold, or in any outbuilding, yard, booth or garden appertaining thereto or connected therewith, there is assessed an excise tax to be paid by such duly licensed pharmacist or the corporation, association or copartnership of which he is a member, engaged in such traffic, and for each such place where such traffic is carried on by such pharmacist, or by such corporation, association or copartnership of which he is a member, the sum of nine and one-half dollars for each excise year, or any part thereof. The holder of a liquor tax certificate under this subdivision may sell alcohol to be used for medicinal or mechanical purposes, without a prescription, except during prohibited hours. (*Subd. amended by L. 1910, ch. 485 and, L. 1916, ch. 416, in effect Oct. 1, 1916.*)

Subds. 4-7 amended by L. 1916, ch. 416, in effect Oct. 1, 1916, as follows:

4. Upon the business of trafficking in liquors upon any car, steamboat or vessel within this state, to be drunk on such car or on any car connected therewith, or on such steamboat or vessel, or upon any boat or barge attached thereto, or connected therewith there is assessed an excise tax, to be paid by every person engaged in such traffic, and for each car, steamboat or vessel, boat or barge, upon which such traffic is carried on, the sum of three hundred and seventy-five dollars. (*Subd. amended by L. 1916, ch. 416, in effect Oct. 1, 1916.*)

5. The holder of a liquor tax certificate under subdivision two of this section, who is engaged in the business of bottling malt liquors, or who bottles the same, and who sells such malt liquors at any place other than that stated in such liquor tax certificate, in quantities of less than five wine gallons, may sell and deliver from a vehicle to the occupant of a store or other building at such place of occupancy, malt liquors in bottles in a quantity of less than five wine gallons, but of not less than three gallons (or twenty-four pint bottles) at a time, provided he shall have obtained for each vehicle from which he so sells and delivers a special tax certificate permitting such traffic from such vehicle. There is assessed for each vehicle so employed an excise liquor tax of one hundred and

eighty-seven and one-half dollars. The state commissioner of excise shall prepare and issue such special liquor tax certificate as shall be necessary to carry out the provisions of this subdivision, and such certificate shall at all times be carried with each such vehicle, or posted therein or thereon, in such manner as the state commissioner of excise shall direct. No sale or delivery of malt liquor under the provisions of this subdivision shall be permitted in any town in which, under section thirteen of this chapter, the sale of liquor, under subdivision two of this section, is prohibited. (*Subd. amended by L. 1916, ch. 416, in effect Oct. 1, 1916.*)

6. Upon the business of trafficking in alcohol in quantities of less than five gallons, which alcohol can be sold only between the hours of seven o'clock in the morning and seven o'clock in the evening, on any day except Sunday, for use for mechanical, medicinal or scientific purposes, by dealers who neither keep nor sell any liquors of any kind other than alcohol, there is assessed an excise tax to be paid by every person engaged in such traffic, and for each such place where such traffic is carried on by such person, if the same be in a city having by the last state census a population of fifteen hundred thousand or more, the sum of forty-seven dollars; if in a city having by said census a population of less than fifteen hundred thousand, but more than five hundred thousand, the sum thirty-seven and one-half dollars; if in a city having by said census a population of less than five hundred thousand, but more than fifty thousand, the sum of twenty-eight dollars; if in a city or village having by said census a population of less than fifty thousand, but more than ten thousand, the sum of eighteen and one-half dollars; if in any other place, the sum of nine and one-half dollars. No liquor tax certificate issued under subdivisions three, five, six or seven of this section, shall be transferred or assigned, and no rebate shall be allowed or paid upon the surrender or cancellation thereof. (*Subd. amended by L. 1916, ch. 416, in effect Oct. 1, 1916.*)

7. Upon the business of trafficking in liquors in quantities of less than five wine gallons, but not less than two wine gallons, in any town, by a grower of fruit therein, or a manufacturer of any liquor produced solely therefrom in such town, which liquor can be sold only between the hours of seven o'clock in the morning and seven o'clock in the evening on any day, except Sunday, no part of which shall be drunk on the premises where sold, or in any outbuilding, yard, booth or garden appertaining thereto or connected therewith, and no part of which liquor shall be sold to or for any resident of said town, except the holder of a liquor tax certificate under subdivision three of this section, in case traffic in liquors therein to be drunk on the premises where sold is prohibited as the result of a vote on local option pursuant to section thirteen of this chapter, there is assessed an excise tax to be paid by every person engaged in such traffic, and for each such place where such traffic is carried on, the sum of ninety-three and one-half dollars for each excise year or any part thereof, during which such traffic is carried on, and no liquor tax certificate issued under

this subdivision shall be transferred or assigned, and no rebate shall be allowed or paid upon the surrender or cancellation thereof. (*Subd. amended by L. 1916, ch. 416, in effect Oct. 1, 1916.*)

Subd. 8, as amended by L. 1910, ch. 485, amended by L. 1916, ch. 416, in effect Oct. 1, 1916, as follows:

8. Enumeration. When the population of a city or village is not shown by the latest state census, it shall be determined for the purposes of this chapter by the latest United States census, and if not shown by reason of a change in boundaries or the incorporation of a new city or village, or by reason of not having been separately enumerated, the state commissioner of excise is authorized and directed, in his discretion, to cause an enumeration of the inhabitants to be taken in such city or village. He may also cause to be taken an enumeration of the inhabitants of any hamlet or unincorporated village, after first having established a limit or boundary line around such hamlet or unincorporated village, within which limit or boundary line such enumeration may be taken. Whenever a limit or boundary line shall have been established around any hamlet or unincorporated village such limit or boundary line shall be described and certified to by the state commissioner of excise and be entered of record and become part of the records of the state department of excise, and such limit or boundary line shall not be changed for a period of five years after the date of recording the same, unless such hamlet or unincorporated village become an incorporated village, with corporate limits and boundary lines different from those established by the state commissioner of excise, in which case such newly incorporated village may be enumerated as hereinbefore provided in this section. If, since the latest state enumeration was taken, the boundaries of the city shall have been changed by the addition of territory not in the same judicial district, such annexed territory shall not be deemed to be a part of such city for the purposes of determining the amount of excise tax assessed therein by this chapter; but the inhabitants of such annexed territory shall be enumerated for purposes of so determining such excise tax and, except as to the amount of the excise tax so determined, all the provisions of this chapter shall be applicable to such annexed territory and the excise tax assessed in such annexed territory shall be paid to the city to which such territory shall have been annexed. The amount of excise tax in every place in this state shall, until changed by an enumeration authorized by the state commissioner of excise, or by an increase or decrease of population shown by subsequent state or United States census, be as provided in subdivisions one, two and six of this section, for places containing the same population. The excise taxes assessed under this chapter in cities containing a population of fifteen hundred thousand or more, which are or shall be formed by the consolidation of territory situate in one or more counties, shall be assessed in the several boroughs or portions of the territory so consolidated to form such city at an advance of seven-eighths in the rate over the amount at which

such taxes were assessed on the thirty-first day of December, nineteen hundred and two, in the several portions of the territory so consolidated. The state commissioner of excise shall immediately certify the result of an enumeration taken by him under the provisions of this chapter to the treasurer or special deputy commissioner of the county or borough in which the territory so enumerated by him or any part thereof is situated, which certificate shall be evidence of the facts therein stated. If there be more than one bar, room or place on the premises, car, steamboat, vessel, boat or barge, at which the traffic in liquors is carried on under any subdivision of this section, a like additional tax is assessed for each such additional bar, room or place. (*Subd. amended by L. 1910, ch. 485, and L. 1916, ch. 416, in effect Oct. 1, 1916.*)

Abandonment of traffic in liquors; issuance of new certificate.—Under subdivision 9 of this section a holder of a liquor tax certificate who has filed a notice of abandonment is given sixty days in which to apply for a transfer, and during said period another certificate cannot be legally issued to the abandoned premises. Hence, a county treasurer has no authority to refuse an application for a transfer of a liquor tax certificate made within sixty days after filing notice of abandonment, although said treasurer has, within said period, issued another certificate to a lessee of the same premises. *People ex rel. Young v. Shults* (1915), 167 App. Div. 33, 152 N. Y. Supp. 301.

Abandonment; effect of void notice.—An application for a liquor tax certificate, at premises where liquor had been sold continuously for several years, stated that no notice of abandonment of the liquor traffic at said premises, pursuant to the provisions of the Liquor Tax Law, had been theretofore filed. As a matter of fact a notice had been filed that the traffic in liquors was abandoned at those premises and was to be carried on at another place, and a liquor tax certificate had been issued for that place. No liquor had been sold, however, at that place and the notice had become null and void from not being acted upon within sixty days from the filing thereof. All of these facts were known to the county treasurer and the state commissioner of excise when the application in question was made, and the answers to the questions in the application were made by the applicant by the direction of the county treasurer. *Held*, that such notice of abandonment, being void under the statute, did not operate as a discontinuance of business at the original place or bar the issuance of or invalidate a certificate for that place. *Held, further*, that the failure of the applicant to secure and file with the application new consents of property owners for such original place did not bar the issuance of the certificate asked for in such application. *Matter of Farley v. Miller* (1916), 216 N. Y. 449, revg. 169 App. Div. 962, 153 N. Y. Supp. 1114.

Execution of notice by attorney.—Upon a proceeding for the cancellation of a liquor tax certificate the power of an attorney in fact for the holder of another certificate for the same premises to execute and file a notice of abandonment thereunder must be conclusively presumed. *Matter of Green* (1916), 171 App. Div. 583, 157 N. Y. Supp. 736.

Effect of filing notice in Bronx county.—Where, at the time a liquor tax certificate was issued in the borough of The Bronx the ratio of population to the number of liquor tax certificates issued therein under subdivision 1 of section 8 of the Liquor Tax Law was less than 750 to 1, traffic in liquors under said certificate became unlawful upon the filing later in the same month by the holder of another certificate of a notice of abandonment of such premises in favor of other premises, no notice of abandonment having been filed in favor of the first premises as

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required by subdivision 9 of section 8 of the Liquor Tax Law, which provides that it shall be unlawful to traffic in liquors at the abandoned premises "unless there shall subsequently be filed another notice of abandonment . . . which notice shall describe such first abandoned premises as the premises in which it is intended to again carry on such traffic in liquors." *Matter of Green* (1916), 171 App. Div. 583, 157 N. Y. Supp. 736.

Abandonment; provision as to notice; construed.—Under subdivision 9, of this section, as amended, providing that no liquor tax certificate may be issued in any borough, unless or until the ratio of population therein to the number of certificates issued under subdivision 1 of said section shall be greater than 750 to 1, an owner of premises in a borough where the ratio is 518 to 1, a certificate for which has been transferred by a notice of abandonment, cannot lawfully traffic in liquors thereon under a new license, until he has filed a new notice of abandonment transferring the traffic from some other licensed premises to his own. Under such conditions the new license may be revoked. The exception contained in subdivision 9 of section 8, providing that the higher ratio prohibition shall not apply to any such traffic in liquors as was lawfully carried on at some time within one year immediately preceding the passage of this act, provided such traffic was not abandoned thereat during said period, does not aid the owner. The facts that after the filing of a notice of abandonment no new license was issued for the remaining period of the old term to the transferred premises, and that the license remained displayed in the original premises, do not affect the validity of the abandonment. *Matter of Farley* (1915), 170 App. Div. 400, 155 N. Y. Supp. 1049.

The right to give a notice of abandonment resides in the owner and holder of the liquor tax certificate, and not in the owner or lessee of the premises in possession thereof. *Matter of Farley* (1915), 170 App. Div. 400, 155 N. Y. Supp. 1049; *McMahon v. Henkel* (1915), 91 Misc. 85, 153 N. Y. Supp. 915.

An assignee of an attorney in fact of the holder of a liquor tax certificate having authority to consent to a transfer thereof, may execute a notice of abandonment. *Matter of Farley* (1915), 170 App. Div. 400, 155 N. Y. Supp. 1049.

Abandonment of premises; action in equity to set aside instrument executed by tenant maintainable.—Where a tenant, the holder of a liquor tax certificate issued to premises leased for a hotel by a writing annexed to the lease and duly acknowledged, covenants that any license to traffic in liquors upon the premises shall immediately upon its issuance become and be appurtenant to the real property and shall be inseparable therefrom during the term of the lease, and as a condition of the granting of the lease expressly waives each, all and every privilege and right to sell, assign, surrender, transfer or file a certificate of abandonment under the provisions of the Liquor Tax Law, and further covenants that neither he nor the person to whom such license may be issued will, during the term of the lease, execute or deliver to any person, firm or corporation other than the landlord any power of attorney or chattel mortgage or other instrument in writing concerning, affecting or encumbering any such license, the privilege of abandoning the traffic in liquors from the leased premises to other premises thereby remains in the landlord, and he is entitled to maintain an action in equity to set aside any instrument executed by the tenant which would affect the right of abandoning the traffic in liquors at the leased premises and to have a certificate issued to plaintiff authorizing the traffic in liquors upon said leased premises. *Brunner v. Diogenes Brewing Co.* (1916), 93 Misc. 681.

Statement as to notice of abandonment.—While an applicant for a liquor tax certificate is required to state whether or not there has been filed with the certificate of the issuing officer a notice of abandonment pursuant to subdivision 9 or 10 of section 8 of the Liquor Tax Law, the statute neither authorizes nor permits him

to state whether or not such notice is null or void. *Farley v. O'Brien* (1915), 91 Misc. 89, 154 N. Y. Supp. 1021.

A county treasurer in passing upon an application for a liquor tax certificate is bound only by such statements as are required or permitted by the statute and on which the right to issue a certificate depends, and a statement that a notice of abandonment is "null and void" whether true or false is not material and does not affect the authority to issue the certificate. *Farley v. O'Brien* (1915), 91 Misc. 89, 154 N. Y. Supp. 1021.

Refusal of application where notice of abandonment is filed.—The act of a county treasurer in passing upon an application for a liquor tax certificate is ministerial, and where at the time the application is made there is on file in his office a notice of abandonment in proper form it is his duty under the statute to refuse the application. *Farley v. O'Brien* (1915), 91 Misc. 89, 154 N. Y. Supp. 1021.

A liquor tax certificate granted upon an application which stated that a notice of abandonment was "null and void" is void *ab initio* where the premises for which the certificate is issued are legally disqualified to be certificated, and the bond accompanying said certificate is without consideration and no recovery can be had thereon. *Farley v. O'Brien* (1915), 91 Misc. 89, 154 N. Y. Supp. 1021.

§ 10. **Officers to whom the tax is to be paid and how distributed.**—The taxes assessed, and all fines and penalties incurred under this chapter in counties or boroughs having a special deputy commissioner of excise shall be collected by and paid to him. In all other counties such taxes, fines and penalties shall be collected by and paid to the county treasurer of the county in which the traffic is carried on, except that the taxes assessed under subdivisions four and five of section eight of this chapter, and all fines and penalties in connection therewith, shall be collected by and paid to the state commissioner of excise and by him to the state treasurer. After June thirtieth, nineteen hundred and seventeen, one-half of the revenues resulting from taxes, fines and penalties under the provisions of this chapter less the amount allowed for collecting the same, and before July first, nineteen hundred and seventeen, three-fifths of the revenues resulting from such taxes, and one-half of the revenues resulting from fines and penalties, under the provisions of this chapter less the amount allowed for collecting the same, shall be paid by the county treasurers, and by the several special deputy commissioners receiving the same within ten days from the receipt thereof, to the treasurer of the state of New York to the credit of the general fund, as a part of the general tax revenue of the state and shall be appropriated to the payment of the current general expenses of the state and the remainder thereof, less the amount allowed for collecting the same, shall belong to the town or city in which the traffic was carried on from which revenues were received, and shall be paid by the county treasurer of such county, or by the special deputy commissioner to the supervisor of such town, or to the treasurer or fiscal officer of such city, within ten days from the receipt thereof. All excise moneys collected by county treasurers and special deputy commissioners of excise shall be deposited until the same shall be paid over to the state treasurer or local fiscal officer as is herein provided, in bank or other depositories designated by the state commis-

sioner of excise, who shall require from each such bank or depository a bond running to the people of the state of New York in such penalty and with such sureties as shall be approved by the said state commissioner, conditioned that such bank or depository will safely keep all such moneys that may be so deposited in or held by it on deposit and will promptly pay the same over at any and all times upon legal demand therefor. Action on said bond for any default or violation of its conditions may be brought by the state commissioner of excise who shall distribute the amount of money recovered to the locality and the state as their respective interests may appear. At the time of making such payment the special deputy commissioner or county treasurer shall furnish to the officer of such city or town to whom such payment is made a written statement under oath stating when such money was received and from whom received; and that the statement includes all the moneys received to a date named in such statement. Such revenues shall be appropriated and expended by such town or city, in such manner as is now or may hereafter be provided by law for the appropriation and expenditures of sums received for excise licenses or in such other manner as may hereafter be provided by law; and any portion of such revenues not otherwise specifically appropriated by law may be applied to the ordinary expenses of the city or town. Any special deputy commissioner or county treasurer who shall neglect or refuse to apportion and pay over such moneys, as above provided, shall, in addition to the fines and penalties otherwise provided in this chapter, be liable to a penalty of fifty dollars for each and every offense, to be recovered in an action by the officer entitled to receive such excise moneys, brought by such officer in the name of the city or town entitled thereto, with costs, in addition to the money unlawfully withheld; and if any special deputy commissioner or county treasurer shall wilfully make and verify a false statement under this section, he shall be guilty of perjury. (*Amended by L. 1916, ch. 416, in effect Oct. 1, 1916.*)

§ 12-a. Assignments or transfers of certificates as collateral security to be filed in office of certificate issuing officer.

See *People ex rel. Spang v. Carey* (1915), 167 App. Div. 949, 152 N. Y. Supp. 969.

§ 13. Local option.

Publication and posting of notices.—Where notices of local option questions were published and posted by the board of elections for a local option election which was held in connection with the general election the publication is a valid one. Where no objection was made that notices of a local option election published and posted in proper form by the board of elections should have been issued by the town clerk, the election which was held openly and was free from fraud or deceit will not be declared invalid because of the irregularity in the procedure, the statutes having been substantially complied with. *Matter of Town of Bath* (1916). 93 Misc. 575, 157 N. Y. Supp. 205.

Submission of local option questions.—Where under this section of the Liquor Tax Law all local option questions were submitted to the electors at a town meeting held in connection with a general election, the commissioners of election

L. 1916, ch. 416.

Bonds to be given.

§§ 15, 16.

provided for by sections 190 and 431 of the Election Law properly took charge of the submission of such questions, and a motion for a re-submission thereof at a special town meeting on the ground that they should have been submitted under the direction of the town clerk will be denied. *Matter of Electors of Town of Wayland* (1916), 94 Misc. 417, 157 N. Y. Supp. 889.

§ 15. Statements to be made on applications for liquor tax certificates.

Persons in possession of their houses and lots under contracts for the purchase of the same are owners thereof within the meaning of section 17 (8) of the Liquor Tax Law, as amended in 1896. *Matter of Clement* (1908), 93 Misc. 563.

False statement as to number of dwellings.—A statement in an application for a liquor tax certificate that there were twelve buildings instead of ten within the 200-foot space is immaterial if the consents of the owners of seven of the ten buildings are valid. *Matter of Clement* (1908), 93 Misc. 563.

§ 16. Bonds to be given.—Each person taxed under this chapter, shall, at the time of making the application provided for in section fifteen of this chapter, file in the office of the county treasurer of the county in which such traffic is to be carried on, or in the office of the special deputy commissioner of excise, if there be one, or if the application be under subdivision four of section eight of this chapter, with the state commissioner of excise, a bond to the people of the state of New York, in the penal sum of the amount plus one-fifth of the tax for one year upon the kind of traffic in liquor to be carried on by such applicant, where carried on, but in no case for less than five hundred dollars, conditioned that there is no material false statement in the application statement for such liquor tax certificate, and that if the liquor tax certificate applied for is given, the applicant or applicants will not, while the business for which such liquor tax certificate is given shall be carried on, suffer or permit any gambling in the place designated by the liquor tax certificate in which the traffic in liquors is to be carried on, or in any yard, booth, garden or any other place appertaining thereto or connected therewith, or suffer, permit or have any opening or means of entrance or passageway for persons or things between the room where the traffic in liquors is carried on, and any other room or place where any person whosoever suffers or permits any gambling, or suffer or permit such premises to become disorderly, or suffer, permit or have any opening or means of entrance or passageway for persons or things between the room or place where the traffic in liquors is carried on, and any other room or place which any person whosoever suffers or permits to become disorderly, and will not violate any of the provisions of this chapter or any act amendatory thereof or supplemental thereto; and that all fines and penalties which shall accrue during the time the certificate applied for is held, and any judgment or judgments recovered therefor, will be paid, together with all costs taxed or allowed in any action or proceeding brought or instituted under the provisions of this chapter. Such bond shall be executed by each such applicant, and if given by a corporation or association, by some person or persons duly authorized so to do as principal, and by at least two sureties who shall be freeholders severally

owning within the county, city or borough where the traffic in liquors is to be carried on, under the certificate applied for, unencumbered real estate of the value of not less than the penalty of the bond and who shall be residents of the county, city or borough in which the premises are where such traffic is to be carried on, or instead of such sureties, by a corporation duly authorized to issue surety bonds by the laws of this state and approved by the state commissioner of excise, but the state commissioner shall not withhold such approval except in the case of a corporation which is of questionable solvency or which has defaulted in the payment for more than thirty days after notice of entry of a judgment recovered by the state commissioner of excise under this chapter. The bond, if given by two sureties, shall have annexed thereto or indorsed thereon the affidavit of each surety that he is not engaged in the traffic in liquors nor employed in the conduct of such business, that he is a freeholder and that he owns unencumbered real estate situate in the county, city or borough where the traffic in liquors is to be carried on under the certificate applied for, of the value of not less than the penalty of the bond, the location of which shall be described in said affidavit, and if in a city or village the street and number given, and that he is worth double the penal sum named in such bond over and above his property exempt by law from levy and sale upon an execution and over and above his just debts and liabilities. The applicant may file in lieu of either of the other sureties herein provided a certificate of deposit for an amount equal to the penalty of said bond plus two hundred dollars. Said certificate to have been issued by an institution authorized by the state comptroller as a depository of state funds. Such certificate shall be drawn to the order of the applicant and be indorsed by him to the state commissioner of excise and the said sum so deposited as shown by said certificate shall at all times be applicable in payment of any judgment recovered by the state commissioner of excise upon said bond. If after the satisfaction of said judgment, there shall remain any surplus out of said deposit, the said surplus shall be at once returned by the state excise commissioner to the said applicant. The state commissioner of excise may at any time without previous prosecution or conviction for violation of any provisions of this chapter, or for the breach of any condition of said bond, commence and maintain an action, in his name, as such commissioner, in any court of record in any county of the state, for the recovery of the penalty for the breach of any condition of any bond or for any penalty or penalties incurred or imposed for a violation of this chapter, provided, however, that such action must be commenced within nine months after the cause of action has accrued. Should the surety given upon such bond be that of a certificate of deposit as above provided, demand may be made nine months or more after the expiration of the certificate granted upon the application which was accompanied by said bond, by the principal of said bond or his assignee of said certificate of deposit, for the surrender by the state excise commissioner of said certifi-

L. 1916, ch. 207.

Officers not to be interested in sale.

§§ 22, 24.

cate of deposit. Said certificate shall be surrendered within ninety days after such demand, unless an action for the recovery of the penalties provided for in said bond shall have been begun. All moneys recovered in such actions shall be paid over and accounted for in the same manner as are moneys collected under subdivision four of section eight of this chapter, but no recovery shall be had in any action commenced hereafter on any bond filed and approved by the certificate issuing officer subsequent to April second, nineteen hundred and three, for more than the amount, plus one-fifth of the tax for one year at the place for which the bond in suit was given, provided that no recovery on any such bond shall be for less than five hundred dollars. (*Amended by L. 1910, ch. 484, L. 1911, ch. 223, and L. 1916, ch. 416, in effect Oct. 1, 1916.*)

Action on bond of certificate holder for three violations of statute.—Where the condition of a bond filed by a liquor dealer, with his application for a liquor tax certificate, provides that "the said principal . . . while the business for which said liquor tax certificate is given, shall be carried on . . . will not violate the provisions of the Liquor Tax Law," and where it appears in an action on the bond for three separate violations of the statute on different dates, that the action was not "commenced within nine months" after the cause of action for the first violation accrued, the action for this breach of the law is barred, but the remedy for the later breaches which occurred within that period survives. For the purpose of measuring the effect of the Statute of Limitations, the wrongs are distinct and severable. *Green v. Petersen* (1916), 218 N. Y. 280, affg. — App. Div. —.

§ 22. Certain officials not to be interested in manufacture or sale of liquors.—It shall be unlawful for any excise commissioner, deputy excise commissioner, special deputy excise commissioner, excise inspector, police commissioner, police inspector, sheriff, deputy sheriff or under sheriff, captain, sergeant, roundsman, patrolman or other police official or subordinate of any police department or any other peace officer, to be either directly or indirectly interested in the manufacture or sale of spirituous or malt liquors, ales, wines or beer or to offer for sale, or recommend to any dealer therein, any spirituous or malt liquors, ales, wines or beer.

The solicitation or recommendation made to any dealer therein, to purchase any spirituous or malt liquors, ales, wines or beer by any excise commissioner, deputy excise commissioner, special deputy excise commissioner, excise inspector, sheriff, deputy sheriff or under sheriff, police official or subordinate as hereinabove described, or any other peace officer, shall be presumptive evidence of such official or subordinate being interested in the manufacture or sale of such spirituous or malt liquors, ales, wines or beer. (*Amended by L. 1916, ch. 207, in effect Apr. 12, 1916.*)

§ 24. Surrender and cancellation of liquor tax certificates; payment of rebates; notice to police officials.

Rebate.—No rebate should be allowed upon additional taxes collected under L. 1915, ch. 672, upon the surrender of a liquor tax certificate. *Atty. Genl. Opin., 6 State Dep. Rep. 422* (1915).

§§ 26, 27.

Certiorari upon refusal to issue.

§ 26. Voluntary sale of liquor tax certificates.

People ex rel. Spang v. Carey (1915), 167 App. Div. 949, 152 N. Y. Supp. 969.

§ 27. Certiorari upon refusal to issue or transfer.

Revocation of certificates.—The Excise Department should exercise its right under subdivision 2 of section 27 of the Liquor Tax Law, and revoke a second certificate illegally issued. People ex rel. Young v. Shults (1915), 167 App. Div. 33, 152 N. Y. Supp. 301.

The fact that the holder of a liquor tax certificate maintained a house of ill-fame, will justify the revocation of the certificate as against an assignee. Farley v. Wurz (1916), 217 N. Y. 105.

An untruthful answer of an applicant for a liquor tax certificate is not false within the intent of the statute, relating to the revocation and cancellation of liquor tax certificates, for the purpose of revoking the certificate, when the information which the question was intended to elicit was, at the time of the making and for the purpose of the application, truthfully, explicitly and in good faith fully imparted to the certificate issuing officer, and the answer within the application was that directed by him. When the state, through its agent or representative, has interpreted and acted upon the information so received, it is equitably estopped from destroying the property of the applicant on the ground that the answer was false. Matter of Farley v. Miller (1916), 216 N. Y. 449.

Revocation of certificate; when offenses of prior holder not provable.—Where the holder of a liquor tax certificate is not the assignee of her predecessor, and her certificate has been issued to her as an original holder, her predecessor's offenses under another license are not provable to her prejudice in a proceeding to revoke her certificate. Farley v. Kelley (1916), 217 N. Y.

A judgment rendered on a plea of guilty against a former holder of a certificate made after its transfer is not evidence against the new holder.—As against him, the violation of the law must be established by independent evidence since the rule that an estoppel binds privies as well as parties applies only to a privity arising after the event out of which the estoppel arises. Farley v. Wurz (1916), 217 N. Y. 105.

Conviction after expiration of certificate for allowing premises to become disorderly; injunction restraining holder of new certificate from trafficking in liquors on same premises.—Under subdivision 8 of section 15 of the Liquor Tax Law, as amended, the conviction of a person who, while the holder of a liquor tax certificate, suffers or permits the certificated premises to become disorderly, attaches the statutory disqualification to the premises, irrespective of whether or not the offender is the holder of the certificate at the time of conviction. Hence where the holder of a liquor tax certificate suffered and permitted the premises to become disorderly, in violation of section 1146 of the Penal Law, and after the expiration of the certificate he was convicted of a misdemeanor for violating said section, the holder of the certificate for the same premises for the following year may be enjoined from trafficking in liquors contrary to the provisions of the statute. Matter of Farley (1915), 170 App. Div. 164, 155 N. Y. Supp. 869.

When liquor tax certificate granted to owner of leased premises revoked; who are necessary parties.—A liquor tax certificate granted to the owner of leased premises upon an application in which she falsely stated that she might lawfully carry on the traffic in liquors there will be revoked. In an action brought by the tenant against the landlord to revoke and cancel the liquor tax certificate, a brewing company to which the said liquor tax certificate had been transferred is not a necessary party. McMahon v. Henkel (1915), 91 Misc. 85, 153 N. Y. Supp. 915.

Revocation of liquor tax certificate; consents of property owners required; when petition to revoke must be granted.—Where in a proceeding for the revocation of a

liquor tax certificate it appears that traffic in liquors was not actually carried on in the premises on March 23, 1896, and that they were not occupied as a hotel on said date, but that they were in fact not used for such traffic for about a year and eight months prior to the filing of the petition for the liquor tax certificate in question, and during several months of that period were used as a grocery store to the knowledge of the owner and with her acquiescence in the sense that she received rent during that period, it must be held that there was an abandonment of the premises for liquor purposes and that they were not "continuously occupied" for such traffic within the meaning of the third exception specified in section 15 (8) of the Liquor Tax Law requiring property consents. No property consent ever having been obtained and filed for the liquor tax certificate, the consent of the petitioner herein who was the owner of premises occupied exclusively as a dwelling within the three hundred feet limit was necessary, and the petition to revoke the liquor tax certificate must be granted though the motive of petitioner was to get rid of a competitor and destroy a rival in business. *Matter of Gruidrod* (1915), 91 Misc. 441, 154 N. Y. Supp. 929.

Form of petition to revoke.—After a trial upon the merits an objection to the form of the petition to revoke a liquor tax certificate that its allegations are on information and belief, and that there is no sufficient statement of the sources of the petitioner's information or the grounds of his belief, does not require the dismissal of the proceeding. *Farley v. Wurz* (1916), 217 N. Y. 105.

Jurisdiction of County Court to issue writ of certiorari under Liquor Tax Law.—Under the provisions of this section that a writ of certiorari to review the action of a county treasurer in refusing to issue a liquor tax certificate may be issued by a county judge or a justice of the Supreme Court, the County Court, as such, has no jurisdiction to issue the writ, and where it appears that the petition was addressed to the County Court and the order for the writ was entitled at a Special Term of the County Court with the statement that the county judge of the county was "present" and contained the provision that the court dispensed with notice of application, and the writ required return to the County Court at a Special Term, and the order recited the action of "the Court," it should be reversed. *People ex rel. Ward v. Hegeman* (1915), 168 App. Div. 419, 153 N. Y. Supp. 112.

An injunction restraining the transfer of certificates, unlike one restraining the continuance of the business, does not require affidavits upon positive knowledge, but it does require a statement of the sources of information and the grounds of belief. *Farley v. Wurz* (1916), 217 N. Y. 105, 109.

Subpoena duces tecum to State Commissioner of Excise.—Where the state commissioner of excise asks for an order revoking and cancelling a liquor tax certificate, a *subpoena duces tecum*, when applied for to a justice of the Supreme Court as required by rule 9 of the General Rules of Practice, may issue to the state commissioner of excise requiring him to produce upon the trial the reports of agents made to him, and any reports or papers material to the issue in the proceeding, but such subpoena may not call for complaints concerning the premises in question. *Matter of Green* (1915), 92 Misc. 503, 157 N. Y. Supp. 87.

§ 30. Other illegal sale and selling.

Sale of liquor on primary days is not prohibited by subdivision C. of this section. *Atty. Genl. Opin., State Dep. Rep., Adv. Sheet No. 38, p. 83* (1916).

§ 33. Search for seizure and forfeiture of liquors kept for unlawful traffic.

—*Subd. 2 amended by L. 1916, ch. 417, in effect May 4, 1916, as follows:*

2. Upon the verified complaint of a special agent, or of a peace officer, setting forth facts which establish that liquors are kept, stored or deposited

in any place in this state for the purpose of unlawful sale or distribution therein within this state, or that there is probable cause for believing that liquors are so kept, stored or deposited, any judge of any city court of record of the city, or any county judge of the county or justice of the supreme court in the judicial district where such liquors are so kept, stored or deposited, shall, if satisfied that there is probable cause to believe that liquors are so kept, stored or deposited, issue his warrant directed to any peace officer, or to a special agent upon his request, commanding him forthwith to search the premises described in said warrant for the liquors specified therein, and to seize such liquors, if found, and the vessels containing the same, and to safely keep such liquors and vessels until final action thereon, as in this section provided, and to make immediate return thereon to the judge or justice issuing the same. The complaint shall state the name of the person so keeping, storing or depositing such liquors as aforesaid, and the name of the owner of the premises where such liquors are so stored, kept or deposited, if known to the complainant, together with a description of such premises sufficient to identify the same. The warrant shall contain a notice directed generally to all persons claiming any right, title or interest in such liquors or in the vessels containing the same, to appear before the judge or justice issuing such warrant, at a place and at a time therein specified, not more than twenty days after the issuance of said warrant and not less than ten days after the execution thereof, and show cause why such liquors and the vessels containing the same should not be forfeited to the state; if the warrant be issued by a justice of the supreme court, such warrant and notice may be made returnable at a special term of said court to be held in the judicial district where such liquors are kept, stored or deposited. The warrant must be executed by the special agent or peace officer to whom it is delivered within ten days after the issuance thereof, and such warrant may be executed at any time between the hours of six o'clock in the morning and six o'clock in the afternoon, or if the premises be open, at any other time. The peace officer or special agent executing such warrant is invested with all the powers conferred upon a peace officer in the execution of a search warrant by sections seven hundred and ninety-nine and eight hundred of the code of criminal procedure. Any person who shall forbid, obstruct or prevent any such peace officer or special agent or any accompanying helper or assistant, free entry into or search of any building or premises specified in such warrant, or the seizure of such liquors therein found or the vessels containing the same, during the time above specified, after notice of the authority and purpose of such peace officer or special agent, shall be guilty of a misdemeanor and may be forthwith and without a warrant arrested by such peace officer or special agent. A copy of such warrant shall be delivered to the person so keeping such liquors, if he be present at the time of such seizure, and if he be not present, then to the person, if any, apparently in possession of such liquors or of the premises wherein the same are found,

and another copy of such warrant shall be posted in a conspicuous place upon said premises. The special agent or peace officer seizing such liquors under said warrant shall give a receipt therefor to the person so keeping such liquors, if present, and if he be not present, then to the person, if any, apparently in possession of such liquors, or in charge of such premises, or in the absence of any such person, he must leave such receipt in the place where the liquors are found. At the time and place specified in the notice contained in such warrant, any person claiming any right, title or interest in the liquors seized under such warrant or in the vessels containing the same may interpose an answer controverting the allegations of the complaint upon which such warrant was issued. If such answer is interposed, the issue thus framed shall be deemed an action pending in the court of the judge or justice who issued the warrant, between the commissioner of excise of the state of New York and the liquor so seized and may be entitled in the name of the said state commissioner of excise and against the liquors so seized, adding for identification the name of the person or persons interposing such answer and claiming or defending the liquors so seized, and shall be tried in said court as other issues of fact are tried therein, and shall be entitled to the preference provided by section seven hundred and ninety-one, subdivision one, of the code of civil procedure. If no answer controverting the allegations of the complaint is interposed, the judge or justice shall proceed to hear the testimony in support thereof. If it be established upon the hearing before said judge or justice or upon the trial of the action, if issue be joined, that the liquors so seized were kept, stored or deposited for the purpose of unlawful sale or distribution within this state, judgment or forfeiture of said liquors and the vessels containing the same to the state shall be entered, which judgment shall provide for the delivery to the state commissioner of excise of such liquors and the vessels in which the same were contained, by the peace officer or special agent who seized the same. Such judgment shall further provide for the sale or destruction, in the discretion of the state commissioner of excise, of such liquors and the vessels in which the same were contained. If, in the judgment of the state commissioner of excise, it is for the best interests of the state that such liquors and containers be destroyed, he shall destroy or cause the destruction of such liquors and containers, but if, in his judgment, it is for the best interests of the state to sell the same, he shall cause the same to be sold either at public auction or at private sale. If sold at public auction, he shall give such notice of the time and place of the sale as he shall deem necessary. He may adjourn such sale from time to time and may reject any or all bids made for such liquors or containers or any part thereof. The proceeds of such sale or sales shall be paid over and accounted for in the same manner as are moneys collected under subdivision four of section eight of this chapter. All expenses and disbursements necessarily incurred or made in caring for and selling said liquors, after the entry of said order, by or under the direction of the

Code Civ. Pro. § 1743.

Annulment of marriages.

L. 1916, ch. 605.

state commissioner of excise, shall be paid by the state treasurer, on the warrant of the comptroller, when approved by said state commissioner of excise. If the testimony produced on the hearing before said judge or justice, or upon such trial before the court, shall fail to establish that the liquors so seized were kept, stored or deposited for the purpose of unlawful sale or distribution within this state, judgment shall be entered dismissing such complaint and providing that such liquors and the vessels containing the same be returned to the place from which or to the person from whom they were taken. Upon the entry of such judgment, the judge or justice presiding at such hearing or upon such trial shall promptly report to the state commissioner of excise, in writing, the date of the issuing of such warrant, the name and residence of the complainant, the location of the premises searched, giving street and number, if any, the name of the officer or special agent to whom such warrant was delivered, and if liquors were seized, a description of the same and the final disposition thereof. The fees of any peace officer and the necessary expenses of any peace officer or special agent in the performance of his duties under this section shall be a charge on the town or city in which the premises searched are situated, and shall be audited and paid in the same manner as other town and city charges for similar services in criminal proceedings are audited and paid. (*Section amended by L. 1909, ch. 281, L. 1910, ch. 485, and L. 1913, ch. 614, and subd. amended by L. 1916, ch. 417, in effect May 4, 1916.*)

MARRIAGE LICENSES.

Records; Domestic Relations L., § 19.

MARRIAGES.

Unlawful solemnization; Penal L., § 1450.

Unlawful procurement of license; Id., § 1451.

Solemnization and fees; Domestic Relations L., §§ 11, 11-a.

Code of Civil Procedure.

§ 1743. In what other cases marriage may be annulled.—An action may also be maintained to procure a judgment, declaring a marriage contract heretofore or hereafter entered into void and annulling the marriage, for either of the following causes, existing at the time of the marriage:

1. That one or both of the parties had not attained the age of legal consent or the age under which the consent of parents or guardians was required by the laws of the state where the marriage was contracted.
2. That the former husband or wife of one of the parties was living, and that the marriage with the former husband or wife was then in force.
3. That one of the parties was an idiot or a lunatic.
4. That the consent of one of the parties was obtained by force, duress or fraud.
5. That one of the parties was physically incapable of entering into the

L. 1916, ch. 605.

Party under age of consent.

Code Civ. Pro. § 1744.

marriage state. But an action can be maintained, under this subdivision, only where the incapacity continues, and is incurable. (*Amended by L. 1916, ch. 605, in effect Sept. 1, 1916.*)

§ 1744. **Action when party was under the age of consent.**—An action to annul a marriage heretofore or hereafter contracted, on the ground that one of the parties had not attained the age of legal consent, or the age under which the consent of parents or guardians was required by the laws of the state where the marriage was contracted, may be maintained by the infant, or by either parent of the infant, or by the guardian of the infant's person; or the court may allow the action to be maintained by any person, as the next friend of the infant. But a marriage shall not be annulled, at the suit of a party who was of the age under which the consent of parents or guardians was required by the laws of the state where the marriage was contracted when it was contracted, or where it appears that the parties, for any time after they attained that age, freely cohabited as husband and wife. (*Amended by L. 1916, ch. 605, in effect Sept. 1, 1916.*)

MEDICINE.

Practice; Public Health L., § 166.

MEMBERSHIP CORPORATIONS LAW.

(L. 1909, ch. 40.)

§ 7. **Consolidation.**—Any two or more membership corporations, incorporated under or by general or special laws, for kindred purposes, being purposes for which a corporation may be formed under any article of this chapter, may enter into an agreement for the consolidation of such corporations setting forth the terms and conditions of consolidation, the name of the proposed corporation, the number of its directors, the time of the annual election and the names of the persons to be directors until the first annual meeting. Each corporation may petition the supreme court for an order consolidating the corporation, setting forth in such petition the agreement for consolidation, a statement of all its property and liabilities and the amount and sources of its annual income. Before the presentation of the petition to the court, the agreement and petition must be approved by three-fourths of the votes lawfully cast at a meeting of each corporation, separately and specially called for that purpose, which approval, duly verified by the chairman and clerk of such meeting, shall be annexed to the petition. On presentation of the petition, the certificate of approval and the agreement for consolidation, and on such notice to interested parties as the court may prescribe, and after hearing such interested parties as desire to be heard, the court may make an order for the consolidation of the corporations on such terms and conditions as it may prescribe. When such order is made and duly entered, such corporation shall become one corporation by the name designated in the order, and be subject only to such duties and obligations as a membership corporation formed under this chapter for the same purposes; and all the property belonging to the corporations so consolidating, shall be vested in and transferred to the new corporation, which shall be subject to all the liabilities of the former corporations, to the same extent as if they had been contracted or incurred by it. But a corporation for the prevention of cruelty to children or animals shall not consolidate with any other corporation, except with a corporation which itself has been formed by the consolidation of a corporation for the prevention of cruelty to children with a corporation for the prevention of cruelty to animals, or by the consolidation of either or both of said last mentioned corporations with a corporation for the prevention of cruelty to children and to animals. This exception shall not apply to the counties of New York, Kings, Queens, Nassau, Suffolk, Richmond, Westchester and Oneida. In the county of Erie a corporation for the prevention of cruelty to children may consolidate with a corporation organized for the care, protec-

L. 1916, ch. 19.

Certificates of incorporation.

§§ 16, 40, 41.

tion and shelter of friendless and vagrant children. (*Amended by L. 1916, ch. 421, in effect May 4, 1916.*)

Young women's associations; consolidation of such corporations; diversity as to religious beliefs.—The Young Women's Association of the City of Troy, incorporated pursuant to chapter 319 of the Laws of 1848, as amended, may, by permission of the court, consolidate with the Young Women's Christian Association of the City of Troy, incorporated under article 8 of the Membership Corporations Law, although the latter corporation is to consist of persons conforming to Protestant evangelical denominations while some of the members of the former corporation do not adhere to a "Protestant" religion. But, in granting the application for such consolidation, the court may provide that all regular members of either association shall be active members of the Young Women's Christian Association at the time of the consolidation. *Matter of Young Women's Association (1915)*, 169 App. Div. 734, 155 N. Y. Supp. 838.

§ 16. Visitation of supreme court.

Nature of power of visitation.—*Matter of Norton (1915)*, 168 App. Div. 385, 153 N. Y. Supp. 798, *affd.* 216 N. Y. 637.

Order appointing referee in visitation proceedings not appealable to Appellate Division.—An order appointing a referee to conduct the investigation in a proceeding instituted under this section to make visitation and inquiry into the affairs of a membership corporation, is not appealable to the Appellate Division. It should contain only the statutory provisions defining the scope and method of the referee's investigation and not anything in the way of an adjudication upon the merits. *Matter of Norton (1915)*, 216 N. Y. 637, *affg.* 168 App. Div. 385, 153 N. Y. Supp. 798.

§ 40. Purposes for which corporations may be formed under this article.

Application.—This section excludes incorporation under this chapter if the corporation sought to be established can be created by any other article of the chapter or any other general law, unless it can be created by consent of the Board of Regents, as stated in section 59 of the Education Law. *Atty. Genl. Opin.*, 5 State Dep. Rep. 456 (1915).

A dental society cannot be incorporated under this chapter, because section 192 of the Public Health Law authorizing such incorporation is exclusive. *Atty. Genl. Opin. (1915)*, 4 State Dep. Rep. 555.

A corporation for the purpose of assisting orphaned, homeless and unfortunate Chinese children, and for providing them with the necessities of life, and for giving them literary and industrial education, may be incorporated under this chapter, if the certificate be consented to in writing by the Board of Regents and the approval of a justice of the Supreme Court and of the State Board of Charities be endorsed upon or annexed thereto. *Atty. Genl. Opin.*, 5 State Dep. Rep. 456 (1915).

§ 41. Certificates of incorporation.—Five or more persons may become a membership corporation for any one of the purposes for which a corporation may be formed under this article or for any two or more of such purposes of a kindred nature, by making, acknowledging and filing a certificate, stating the particular objects for which the corporation is to be formed, each of which must be such as is authorized by this article; the name of the proposed corporation; the territory in which its operations are to be principally conducted; the town, village or city in which its

§§ 70, 85.

Cemeteries in Nassau county.

L. 1916, ch. 178.

principal office is to be located, if it be then practicable to fix such location; the number of its directors, not less than three nor more than forty; and the names and places of residence of the persons to be its directors until its first annual meeting. Such certificate shall not be filed without the written approval, indorsed thereupon or annexed thereto, of a justice of the supreme court. If such certificate specify among such purposes the care of orphan, pauper or destitute children, the establishment or maintenance of a maternity hospital or lying-in asylum where women may be received, cared for or treated during pregnancy or during or after delivery, or for boarding or keeping nursing children, the written approval of the state board of charities shall also be indorsed thereupon or annexed thereto, before the filing thereof. On filing such certificate, in pursuance of law, the signers thereof, their associates and successors, shall be a corporation in accordance with the provisions of such certificate. Any corporation heretofore or hereafter organized under this article for the purpose of gathering, obtaining and procuring information and intelligence, telegraphic or otherwise, for the use and benefit of its members, and to furnish and supply the same to its members for publication in newspapers owned or represented by them may admit as members thereof, other corporations, limited liability companies, joint-stock and other associations, partnerships and individuals engaged in the same business or in the publication of newspapers, periodicals or other publications, upon such terms and conditions, not inconsistent with law or with its certificate of incorporation, as may be prescribed by its by-laws. (*Amended by L. 1916, ch. 19, in effect Mch. 2, 1916.*)

§ 70 Cemeteries; application of proceeds of sale of lots.

The issuance of a certificate of indebtedness by a cemetery association to the promoter of its grantor for services rendered by him in his own behalf in looking up and acquiring land, for which he was apparently compensated by the receipt of stock in the grantor of the cemetery association, is *ultra vires*, for even if some part of the expenses might have been "incidental expenses and liabilities" of the association the one who rendered the services might have been paid out of the proceeds of the sale of the use of lots as provided by this section of the Membership Corporations Law. *Bade v. Ferncliff Cemetery Association* (1915), 91 Misc. 26, 154 N. Y. Supp. 161.

§ 85. Cemeteries in Nassau county.—A cemetery corporation shall not hereafter be incorporated for the purpose of conducting its operations in the county of Nassau, except as provided in sections seventy-six and seventy-nine of this chapter; it shall not be lawful for any corporation, association or person, except as hereinafter provided, hereafter to acquire or take by deed, devise or otherwise, or to set apart or use, any land in the said county for cemetery, burial or mausoleum purposes. Nothing herein contained shall prevent existing cemetery corporations owning in the said county cemeteries in which burials have been made prior to January first, nineteen hundred and thirteen, from acquiring contiguous

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Fire corporations.

§ 100.

land for cemetery purposes in the manner now provided by law and using for burial purposes any such land heretofore or hereafter so acquired contiguous to existing cemeteries; nor to prohibit the dedication or use of land within the said county for a family cemetery as provided in section seventy-eight of this chapter. (*Added by L. 1913, ch. 139, and amended by L. 1916, ch. 178, in effect Apr. 10, 1916.*)

ARTICLE V.

(Article amended by L. 1916, ch. 595, in effect May 19, 1916.)

FIRE CORPORATIONS.

Section 100. Certificate of incorporation.

101. Incorporation of fire corporations in towns legalized.
102. Powers.
103. Fire corporation may take by will.
104. Duty of trustees, directors or managers to file report.
105. General powers conferred.

§ 100. **Certificate of incorporation.**—Ten or more persons may become a fire, hose, protective or hook and ladder corporation by making, acknowledging and filing a certificate, stating the particular object for which the corporation is to be formed; the name of the proposed corporation; the city, village, fire district, or town in which it proposes to act; the number of directors; and the names and places of residence of the persons to be directors until its first annual meeting.

Such certificate shall not be filed without the approval indorsed thereupon, or annexed thereto, of a justice of the supreme court of the judicial district in which said corporation proposes to act, nor unless there is annexed thereto a certified copy of a resolution of the board of trustees of the village or the fire commissioners of a fire district or the approval of the mayor of the city, or, if not within a village, city or fire district, a resolution of the town board of the town in which the corporation proposes to act, or if the territory to be served by such corporation is located in more than one town, a resolution of the town board of each town in which any part of the territory in which said corporation proposes to act is located, consenting to its incorporation.

On filing such certificate, the signers thereof, their associates and successors, shall be a corporation in accordance with the provisions of such certificate.

In towns outside of villages and fire districts, the consent of the town board or boards to the incorporation of said corporations shall be an appointment of the several persons named in the certificate of incorporation as town firemen. Other persons may be elected as members of the corporation by the members thereof under such by-laws as may be adopted from time to time by such corporation, but the election of a member must be confirmed by the town board of the town in which he resides.

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Fire corporations.

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Such corporations shall, in law, be capable of taking, receiving, purchasing and holding real estate for the purposes of their incorporation, and for no other purpose. (*Amended by L. 1916, ch. 595, in effect May 19, 1916.*)

§ 101. **Incorporation of fire corporations in towns legalized.**—Any fire, hose, protective or hook and ladder corporation heretofore organized under chapter three hundred and ninety-seven of the laws of eighteen hundred and seventy-three, or chapter three hundred and fifteen of the laws of eighteen hundred and eighty-seven, or under this article, with the consent of the town board, if the territory served by such corporation is located in a town, or with the consent of two or more town boards, if the territory served by such corporation is located in two or more towns, is hereby legalized and confirmed, notwithstanding the omission of any town board to appoint the members of such corporations as town firemen, or to exercise governmental control over them. Any such corporation shall hereafter be subject to the provisions of this article. (*Amended by L. 1916, ch. 595, in effect May 19, 1916.*)

§ 102. **Powers.**—A fire, hose, protective or a hook and ladder corporation, incorporated under this article or under a law repealed by this chapter, shall only engage in such business as properly belongs to a fire, hose, protective or hook and ladder corporation, in the city, village, fire district or town or towns named in its certificate or as specially authorized by law. In participating in the prevention and extinguishment of fires, such corporation shall be under the control of the city, village, fire district or town authorities having by law, control over the prevention or extinguishment of fires therein. Such authorities may adopt rules and regulations for their government and control. Where a corporation which is subject to the provisions of this article furnishes fire protection to an incorporated village under a contract with the board of trustees thereof or with the consent of such village board of trustees or the fire commissioners of such village, residents of such village may be members of such fire corporations and such fire corporations and the members thereof shall be exclusively under the government and control of the town board of the town in which such fire corporation maintains its apparatus. (*Amended by L. 1916, ch. 595, in effect May 19, 1916.*)

§ 103. **Fire corporations may take by will.**—Any corporation formed under chapter three hundred and ninety-seven of the laws of eighteen hundred and seventy-three or chapter three hundred and fifteen of the laws of eighteen hundred and eighty-seven or under this article, may take, hold or receive any property, real or personal, by virtue of any devise or bequest contained in any last will and testament. (*Amended by L. 1916, ch. 595, in effect May 19, 1916.*)

§ 104. **Duty of trustees, directors or managers to file report.**—It shall be the duty of the trustees, directors or managers of all corporations formed under this article in unincorporated villages, or a majority of them, on or before the fifteenth day of January in each year, to make and file in the county clerk's office, where the certificate of incorporation is filed a certificate under their hands, stating the names of the trustees, directors or managers and officers of such corporation, with an inventory of the property and effects and liabilities thereof, with an affidavit of said trustees, directors or managers, or a majority of them, of the truth of such certificate and inventory; and also a like affidavit that such corporation has not been engaged, directly or indirectly, in any other business than such as is set forth in the certificate of incorporation. (*Amended by L. 1916, ch. 595, in effect May 19, 1916.*)

§ 105. **General powers conferred.**—Every corporation formed under this article or subject to its provisions shall possess the general powers conferred by and be subject to the provisions and restrictions of the general corporation law; and every active fireman who shall be a member of any department or company organized under the provisions of this article, or organized under any other law and which is now subject to the provisions of this article, or who shall have served five years as a member of such corporation and has been honorably discharged therefrom shall be entitled to all the rights granted to volunteer firemen or exempt volunteer firemen by any statute of this state. (*Amended by L. 1916, ch. 595, in effect May 19, 1916.*)

§ 121. **Prohibition of new corporations in certain counties.**—A corporation for the prevention of cruelty to animals shall not hereafter be incorporated for the purpose of conducting its operations in the counties of New York, Kings, Queens, Richmond, Suffolk, Westchester, outside of the city of Yonkers, or the county of Rensselaer, or in any other county if thereby there would be two or more such corporations formed for the purpose of conducting operations in such county. But any corporation for the prevention of cruelty to children or to animals or to both may exercise its powers and conduct the like operations in any adjacent county in which no such corporation for such purpose exists, and may continue to do so until the establishment of such a corporation therein. In certificates of incorporation organizing additional corporations under this article in the city of Yonkers, such city must be designated as the place in which any such corporation is to conduct its operations instead of the county of Westchester, and its operations shall be confined to such city. The Brooklyn society for the prevention of cruelty to children may exercise all its powers in the county of Nassau until a society for the prevention of cruelty to children shall be incorporated and located therein, and may exercise all its powers in the county of Suffolk until such a corporation is incorporated

§§ 223, 224.

Alumni corporations; directors, etc.

L. 1916, ch. 235.

and located therein. (*Amended by L. 1911, ch. 623, and L. 1916, ch. 177, in effect Apr. 10, 1916.*)

§ 223. **Corporate powers; alumni funds; special directors; expenses.**—The corporations formed under the provisions of this article shall have power to create, manage and control a fund, to be known as an alumni fund, and for that purpose to take and acquire real and personal property by gift, devise or purchase, the net annual income of which shall not exceed the sum of fifty thousand dollars, and the income thereof may be used for and applied to such object or objects connected with such college, colleges or university as such corporation shall direct. The corporations formed under the provisions of this article shall also have power to elect from among their members such a number of trustees or directors of the college or colleges, or university to which their members shall respectively belong, as such college, colleges or university shall designate; to prepare and publish from time to time an alumni record or directory; to prescribe reasonable terms and conditions upon which their members shall be entitled to vote or hold office; to provide for meetings and reunions of their members, and for literary and other entertainment at such meetings and reunions; to appropriate from their funds a sufficient sum to defray the expenses of such meetings and reunions, including the expense of any banquet that may be given at the same, provided that no part of the permanent fund of such corporation, or of the income thereof, shall be appropriated for such purposes; to take such other action and to transact such other business as usually pertain to alumni associations of colleges and universities; and to adopt such a constitution and by-laws and such rules and regulations as may be necessary or proper for their government and regulation, and for the accomplishment of the objects of their incorporation, not inconsistent with the laws of this state. This section shall not apply to any college or university whose alumni are now empowered to elect trustees in accordance with any special act heretofore passed by the legislature. (*Amended by L. 1916, ch. 235, in effect Apr. 17, 1916.*)

§ 224. **Directors and officers, election compensation.**—The corporations formed under the provisions of this article shall elect annually from their members such a number of directors, not less than nine, as their constitution and by-laws shall prescribe, and from the directors so chosen shall elect a president, a vice-president, a secretary, and a treasurer, who shall be respectively the president, the vice-president, the secretary, and the treasurer both of the corporation and of the board of directors. Said corporations may also elect such other officers and committees as their constitutions and by-laws shall prescribe. But no officer, director or member of a committee of such corporation, except its secretary and treasurer, shall receive any compensation for his service as such officer, director or member of a committee, except the same be granted by a two-thirds vote of all the members present at any regular meeting of the corporation. The

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compensation of the secretary and treasurer of any such corporation shall be fixed by the board of directors, and said board may refuse to grant any compensation to such secretary or treasurer or both. In case a vacancy shall occur from any cause in said board of directors, or in any office of said corporation, or board of directors, the same shall be filled by said board of directors, or by the executive committee of the same, if empowered so to do by the constitution or by-laws of the corporation, and the person or persons chosen to fill such vacancy shall hold office until his or her successor shall be chosen at a regular meeting of said corporation. (*Amended by L, 1916, ch. 235, in effect Apr. 17, 1916.*)

MILITARY LAW.

(L. 1909, ch. 41.)

§ 5. **Designation and division of the militia.**—The militia of the state shall be divided into two parts; the active and the reserve militia; the active militia shall consist of the organized and uniformed military forces known as the national guard, and of the organized and uniformed naval forces known as the naval militia; the reserve militia shall consist of all those liable to service in the militia, but not serving in the national guard or in the naval militia of the state. The governor may order such organization of the reserve militia or of designated classes thereof or of volunteers therefrom as he may deem to be for the public interest and may adopt therefor such parts of the regulations governing the active militia or establish such special regulations, or both, as he may deem proper. (*Amended by L. 1916, ch. 568, in effect May 15, 1916.*)

§ 9. **Drafts or volunteers from the militia.**—Whenever it shall be necessary to call out any portion of the reserve militia for active duty in case of insurrection, invasion, tumult, riot or breach of the peace or imminent danger thereof, or when called forth for service under the constitution and laws of the United States, the governor may call for and accept as many volunteers as are required for such service, or he may direct his order to the mayor of any city or the supervisor of any town, who, upon the receipt of the same shall forthwith proceed to draft as many of the reserve militia in his city or town, or accept as many volunteers as are required by the governor, and shall forthwith forward to the governor a list of the persons so drafted or accepted as volunteers. (*Amended by L. 1916, ch. 568, in effect May 15, 1916.*)

§ 9-a. **Drafts or volunteers from the reserve militia into the national guard and naval militia.**—For the purpose of maintaining the national guard and naval militia at the standard of efficiency required for public safety, or of conforming to any organization now or hereafter adopted for the army of the United States or prescribed by the laws of the United States for the organization of the national guard or naval militia, the governor may also, at any time, call for volunteers or order that an enrollment be made of that part of the reserve militia residing in any city or town, and that a draft be made, or volunteers secured therefrom, of such number as may be required to make up or complete the complement of organizations of the national guard or naval militia or any part thereof located therein; the governor in such case, shall direct his order to the mayor of any city, or supervisor of any town, specifying the number required in each case, and upon the receipt of such order, the said mayor or

the supervisor, as the case may be, shall proceed forthwith to enroll the reserve militia residing within such city or town and to draft therefrom the number specified, or he may accept as volunteers as many as are required by the governor to make up such quota, and he shall forthwith forward to the governor a list of the persons so accepted as volunteers or drafted for such purpose. The names and addresses of all persons so drafted or volunteering, shall be certified by the governor to the commanding officers of the several regiments, battalions, squadrons, troops, companies or other units to which such persons are assigned for service, and the persons so named and certified shall be deemed for all purposes enlisted members of the organization and units of the national guard or naval militia, as the case may be, to which they are assigned, and entitled to all the rights and privileges and subject to all the obligations and duties of enlisted men therein, from and after the date of such certification, except those who may be found to be unacceptable or unqualified by the officers whose approval of enlistment application by the same persons, in the same organizations, would be required under the provisions of article five of this chapter. Persons rejected by such officers shall continue in the reserve, militia and be subject to orders or drafts for service, under sections eight and nine and nine-a of this chapter. (*Added by L. 1916, ch. 568, in effect May 15, 1916.*)

§ 11. **Organization of reserve militia when ordered out.**—The portion of the reserve militia so accepted shall be immediately mustered into the service of the state for the lawful term of enlistment authorized by this chapter, or such less period as the governor may direct, and shall be organized into troops, batteries, companies, sanitary units, or naval divisions, which may be arranged in squadrons, battalions, regiments, field hospitals or ambulance companies, or assigned to organizations of the active militia already existing. The governor is authorized to appoint the officers necessary to commence or complete any organization thus created. Such new organization shall be equipped, disciplined and governed according to this chapter and the military and naval regulations of the state. (*Amended by L. 1911, ch. 98, and L. 1916, ch. 568, in effect May 15, 1916.*)

ARTICLE 1-A.

(Article added by L. 1916, ch. 566, in effect May 15, 1916.)

MILITARY AND DISCIPLINARY TRAINING.

- Section 26. Military training commission, its assistants, employees and expenses.
- 27. Physical and disciplinary training in schools; military training.
- 28. Field training for boys.
- 29. General powers and duties of the commission.
- 29-a. State military property, including armories, may be used.
- 29-b. Use of school buildings.
- 29-c. Expenses of detailed officers and men.
- 29-d. Definitions; article not applicable to certain schools.

§ 26. Military training commission, its assistants, employees and expenses.

—A military training commission for the state is hereby established composed of the major general commanding the national guard ex officio, who shall be chairman of the commission, a member to be appointed by the board of regents of the university of the state and a member to be appointed by the governor. The appointed members shall hold office for terms of four years.

The commission shall meet at such places within the state at such stated times as it determines and other meetings shall be held at the call of the chairman or of a majority of the members of the commission at a time and place stated in the call.

The commissioners shall not receive any compensation for their services as such, but they shall be paid their traveling expenses actually and necessarily incurred in the performance of their duties as commissioners.

The commission may appoint and at pleasure remove an inspector of physical training at a salary not exceeding five thousand dollars a year and other assistants and clerks and employees at salaries to be fixed by the commission.

The commission shall make an annual report to the governor containing a summary of the business transacted with a statement in detail of its expenditures. (*Added by L. 1916, ch. 566, in effect May 15, 1916.*)

§ 27. Physical and disciplinary training in schools; military training.—

(1) The military training commission shall advise and confer with the board of regents of the university of the state of New York as to the courses of instruction in physical training to be prescribed for elementary and secondary schools as provided in the education law.

In order to more thoroughly and comprehensively prepare the boys of the elementary and secondary schools for the duties and obligations of citizenship, it shall also be the duty of the military training commission to recommend from time to time to the board of regents the establishment in such schools, of habits, customs and methods best adapted to develop correct physical posture and bearing, mental and physical alertness, self-control, disciplined initiative, sense of duty and the spirit of co-operation under leadership.

(2) After the first day of September, nineteen hundred and sixteen, all boys above the age of sixteen years and not over the age of nineteen years, except boys exempted by the commission, shall be given such military training as the commission may prescribe for periods aggregating not more than three hours in each week during the school or college year, in the case of boys who are pupils in public or private schools or colleges, and for periods not exceeding those above stated between September first of each year and the fifteenth day of June next ensuing in the case of boys who are not pupils; but any boy who is regularly and lawfully employed in any occupation for a livelihood shall not be required to take such training

unless he volunteers and is accepted therefor. Such training periods, in the case of pupils in such schools and colleges, shall be in addition to prescribed periods of other instruction therein and outside the time assigned therefor. Such training shall be conducted under the supervision of the military training commission by such male teachers and physical instructors of schools and colleges as may be assigned by the boards of education or trustees of such schools or governing bodies of such colleges and accepted by the commission, and by officers and enlisted men of the national guard and naval militia detailed for that purpose by the major general commanding the national guard or such officer and enlisted men of the United States army as may be available. The officers and enlisted men of the national guard and naval militia so detailed shall, while in the actual performance of the duties of the detail, receive such percentage of the pay authorized by this chapter for officers and enlisted men of the national guard and naval militia of their respective grades and length of service as may from time to time be fixed by the commission. Teachers and instructors assigned from schools and colleges shall be paid such compensation as the commission may determine out of the moneys appropriated for carrying out the provisions of this article. (*Added by L. 1916, ch. 566, in effect May 15, 1916.*)

§ 28. **Field training for boys.**—Within the limit of appropriations therefor, the commission shall establish and maintain state military camps of instruction for field training of boys who are physically fit and above the age of sixteen years and not over the age of nineteen years and who are accepted therefor by the commission. In determining the persons to receive such field training, where moneys available are not sufficient to provide for all, preference shall be given in the following order unless otherwise provided by law: (1) To male pupils in attendance during the preceding school year in secondary schools; (2) pupils in attendance at state agricultural schools and state agricultural colleges during that period; (3) the other boys above specified. The camps shall be located in such places throughout the state as the commission may determine. Any society, organization or association having a fair ground and entitled to an apportionment of state moneys under sections three hundred and ten and three hundred and eleven of the agricultural law, shall, upon the request of the commission, allow the use of its grounds, or part thereof, for any such camp, when the grounds are not needed for its own purposes, unless previously leased to other parties; and if any such society, association or organization shall refuse to allow the use of its grounds as above provided, the moneys otherwise due to it under such law shall be withheld each year in which such refusal occurs. Such field training shall be given annually, during the summer months, and shall for each detachment of boys cover a period of not less than two or more than four weeks, as the commission may determine. Such camps and the training and discipline

thereat shall be under the direction and charge of the major general commanding the national guard, subject to the supervision of the commission. The major general commanding the national guard shall detail for service at such camps, such number of officers and enlisted men of the national guard and naval militia as may be required by the commission. Such officers and enlisted men during such detail shall receive pay, subsistence and transportation as authorized in this chapter and the regulations issued thereunder for officers and enlisted men of their grades and length of service on duty under orders of the major general, commanding the national guard. (*Added by L. 1916, ch. 566, in effect May 15, 1916.*)

§ 29. **General powers and duties of the commission.**—The commission in addition to the powers elsewhere in this article conferred on it shall have power to

1. Provide for the observation and inspection of the work and methods prescribed under the provisions of this article, or under the provisions of the education law relating to instruction in physical training prescribed after conference with the commission.
2. Prescribe the powers and duties of the inspector of physical training.
3. Regulate the duties of clerical and other assistants and employees of the commission.
4. Prescribe rules and regulations for compulsory attendance during the periods of military training provided in this article.
5. Regulate individual exemptions from prescribed military training.
6. Maintain, and co-operate with the colleges in the state or the federal authorities in maintaining, courses of instruction for male teachers and physical instructors and others who volunteer and are accepted by the commission.
7. Make regulations and rules for fully carrying into effect the provisions of this article.

§ 29-a. **State military property including armories, may be used.**—The authorities in charge of armories may, upon the application of the military training commission, allow the use of any armory of the national guard and naval militia for the conduct of military drills provided for by this article, and may authorize the temporary use by boys for whom military instruction is provided as prescribed in this article, for the purpose of such drills, of arms and other equipment of the national guard and naval militia, belonging to the state, not then required for the use of the national guard or naval militia, and of arms and other equipment which may have been rendered obsolete and unserviceable and which may be retained and issued for such purpose, under such rules and regulations as the proper military authorities may prescribe. The military authorities of the state are authorized and empowered to loan to the military training commission such military property as may be necessary in the organization and mainte-

L. 1916, ch. 466.

Military and disciplinary training.

§§ 29b-30.

nance of field training camps, and to carry out the provisions of this article. (*Added by L. 1916, ch. 566, in effect May 15, 1916.*)

§ 29-b. **Use of school buildings.**—The school authorities throughout the state are authorized to permit the use of school buildings and school grounds for the purpose of carrying out the provisions of this article. (*Added by L. 1916, ch. 566, in effect May 15, 1916.*)

§ 29-c. **Expenses of detailed officers and men.**—The expenditures authorized to be made by this article to officers and enlisted men of the national guard detailed as therein authorized shall be paid from funds appropriated to carry out the provisions of this article. (*Added by L. 1916, ch. 566, in effect May 15, 1916.*)

§ 29-d. **Definitions; article not applicable to certain schools.**—The expression "school authorities" as used in this article shall be construed to have the same meaning and effect as is given to such expression in the education law. "Secondary schools" mean schools for "secondary education," as defined in such law, to the extent that they provide such education. None of the provisions of this article shall apply to any agricultural college in any institution in this state which receives the benefits of the act of congress of July second, eighteen hundred and sixty-two, providing for instruction in agriculture, the mechanic arts, and military training, and in which instruction in military tactics is now required of pupils, nor shall it apply to pupils therein. (*Added by L. 1916, ch. 566, in effect May 15, 1916.*)

L. 1916, ch. 566, § 2. The sum of one hundred thousand dollars (\$100,000), or so much thereof as may be necessary, is hereby appropriated to carry out the provisions of this act, which sum shall be expended under the direction of the military training commission for its expenses, the salary of assistants, clerical hire, pay and expenses of detailed officers and enlisted men of the national guard and naval militia, compensation of teachers and instructors as signed from schools and colleges for conducting military training, and the cost of maintaining training camps.

§ 30. **Composition and strength.**—The national guard of the state shall consist of a major-general, brigadier-generals, and adjutant-general's department, an inspector-general's department, a judge-advocate-general's department, an ordnance department, a quartermaster corps, a corps of engineers, a coast artillery corps, a medical department, a signal corps, the commissioned officers heretofore or hereafter retired or rendered supernumerary, the organizations forming the national guard at this date, such others as may be organized hereafter and such persons as are enlisted and commissioned therein. The governor shall have power to alter, divide, annex, consolidate, disband or reorganize any organization, department or corps and create new organizations, departments or corps when required by the provisions of this chapter or whenever in his judgment the efficiency of the state forces will be thereby increased, and he shall have power

to change the organization of any organization, department or corps so as to conform to any organization, system of drill or instruction now or hereafter adopted by the army of the United States or prescribed by the laws of the United States for the government of the militia, and for that purpose the number of the officers and non-commissioned officers of any grade in any organization, department or corps may be increased or diminished and the grades of such officers and non-commissioned officers may be altered to the extent necessary to secure such conformity. The governor shall have power to fix and from time to time to alter the maximum number of enlisted men which shall form part of any organization, department or corps irrespective of but not exceeding the maximum prescribed therefor in this chapter. The aggregate forces of the national guard in time of peace, fully armed, uniformed and equipped, shall be not less than ten thousand and not over twenty-three thousand enlisted men, but the governor shall have power in case of war, insurrection, invasion or imminent danger thereof to increase the forces beyond the said twenty-three thousand and organize the same as the exigencies of the service may require. (*Amended by L. 1916, ch. 564, in effect May 15, 1916.*)

§ 31. Division and brigades.—The brigades and other military units of the national guard shall constitute a division which shall be commanded by a major-general. The staff of the division shall consist of officers, detailed from the various staff corps and departments as follows:

One adjutant-general, colonel, and two adjutants-general, lieutenant-colonels, adjutant-general's department.

One inspector-general, colonel, two inspectors-general, lieutenant-colonels, and one inspector-general, major, inspector-general's department.

One judge-advocate, colonel, judge-advocate-general's department.

One quartermaster, colonel and one quartermaster, lieutenant-colonel, quartermaster corps.

One surgeon, lieutenant-colonel, medical corps, two surgeons, majors, medical corps.

One engineer, lieutenant-colonel, corps of engineers.

One ordnance officer, colonel, one ordnance officer, major, and one ordnance officer, captain, ordnance department.

One signal officer, major, signal corps.

One coast defense officer, lieutenant-colonel, coast artillery corps.

Three aides, captains or lieutenants, from the national guard.

A brigade shall consist of two or more regiments of infantry, but separate battalions and separate companies may be assigned thereto. There shall be such number of brigades composed of such infantry organizations as the governor may direct. A brigade shall be commanded by a brigadier-general. The staff of a brigade shall consist of officers detailed from the various staff corps and departments, as follows:

One adjutant-general, major, adjutant-general's department.

L. 1916, ch. 473.

Staff departments; quartermaster corps.

§§ 32, 32a.

One judge-advocate, major, judge-advocate-general's department.

Two quartermasters, majors, quartermaster corps.

One ordnance officer, major, ordnance department.

Two aides, lieutenants, from the national guard.

In addition to the officers above specified the governor upon the recommendation of the major-general may detail from the national guard for duty on the staff of the division or on the staff of a brigade such other officers as may be considered necessary.

The ranking officers of the quartermaster corps, medical corps, corps of engineers, ordnance department and signal corps on the staff of the division shall be respectively designated as chief quartermaster, chief surgeon, chief engineer, chief ordnance officer and chief signal officer, but such designations shall not constitute such officers chiefs of the staff departments to which they belong. (*Amended by L. 1909, ch. 370, and L. 1916, ch. 564, in effect May 15, 1916.*)

§ 32. **Staff departments.**—There shall be the following departments consisting of officers of number and rank hereinafter specified necessary for the staffs of the division, the brigades and for duty with the several organizations of the national guard, as follows:

An adjutant-general's department consisting of one colonel, two lieutenant colonels, five majors and one captain; an inspector general's department, consisting of one colonel, two lieutenant colonels and four majors; a judge advocate general's department consisting of one colonel, and four majors; an ordnance department consisting of one colonel, six majors, and one captain; a medical department to consist of the medical corps composed of one lieutenant colonel, twenty-three majors, one hundred and twenty-one captains and first lieutenants and the hospital corps, field hospitals and ambulance companies.

Upon the recommendation of the major general the governor may appoint and commission such additional officers not above the rank herein prescribed as may be necessary to properly perform the duties of the departments hereby created.

There shall also be appointed twenty-two ordnance sergeants who shall belong to the ordnance department.

The hospital corps shall consist of sergeants first class, sergeants, corporals, privates first class, and privates enlisted therein of such numbers as the governor on the recommendation of the major general may from time to time prescribe.

Upon the recommendation of the major general the governor may fix and increase or decrease the number of departmental non-commissioned staff officers. (*Amended by L. 1909, ch. 370, L. 1911, ch. 167, and L. 1916, ch. 473, in effect May 9, 1916.*)

§ 32-a. **Quartermaster corps.**—There shall be a quartermaster corps to consist of one colonel, three lieutenant-colonels, eight majors, eight cap-

tains, two veterinarians, wagon companies, auto-truck companies, pack train companies, and bakery companies with such enlisted personnel as the governor may from time to time designate, and such enlisted men for assignment to organizations as may be from time to time prescribed. (*Added by L. 1916, ch. 564, in effect May 15, 1916.*)

§ 33. **Corps of engineers.**—There shall be a corps of engineers to consist of one lieutenant-colonel, three majors, one captain as adjutant, one captain as supply officer, one captain as inspector small arms practice, one chaplain, one pioneer battalion, one pontoon battalion and one band organized as prescribed for an infantry band. For purposes of administration, drill and instruction, the pioneer battalion and pontoon battalion may be placed under the command of the lieutenant-colonel, corps of engineers.

A battalion of engineers shall consist of:

One major.

One captain (adjutant).

One battalion sergeant major.

One supply detachment, and

Four companies.

A supply detachment shall consist of

One first lieutenant (supply officer).

One battalion quartermaster sergeant.

A company of engineers shall consist of:

One captain.

One first lieutenant.

One second lieutenant.

One first sergeant.

One quartermaster sergeant.

Five sergeants.

Eight corporals.

Two cooks.

Two musicians.

Eighteen privates, first class,

Five privates, first or second class (mounted) and

Twenty-three privates, second class.

The minimum enlisted strength of a company of engineers shall be sixty-five.

The maximum enlisted strength of a company of engineers shall be one hundred and sixty-four.

The governor, upon the recommendation of the major-general may increase the number of sergeants to twelve, the number of corporals to eighteen, the number of first class privates to sixty-four and the number of second class privates to sixty-four.

The enlisted force herein provided and the officers serving with the or-

L. 1916, ch. 474.

Signal corps; infantry.

§§ 34, 35.

ganized battalions shall constitute a part of the line of the national guard. (*Amended by L. 1916, ch. 564, in effect May 15, 1916.*)

§ 34. **Signal corps.**—There shall be a signal corps which shall be a staff corps and shall consist of officers of the number and grade herein specified necessary for the performance of the duties of signal officers on the different staffs and other duties properly pertaining to the signal corps and the officers assigned to duty with battalions, companies and detachments of the signal corps, as follows:

One major who shall command the signal corps and be chief signal officer of the division, three captains, eleven first lieutenants, and enlisted men, of the number and grade as follows:

Three master signal electricians, sixteen first class sergeants, twenty-eight sergeants, thirty-nine corporals, one hundred and four first class privates, twenty-three privates, six cooks.

A battalion of the signal corps shall consist of one major, one first lieutenant (battalion adjutant and quartermaster), two first class sergeants (acting sergeant-major and acting battalion quartermaster-sergeant), two sergeants (color sergeant and clerk), five first class privates (four orderlies and one driver), one wire company, one radio company, a wire company of the signal corps shall consist of one captain, two first lieutenants, and a maximum enlisted strength of the different grades, as follows: one master signal electrician, five first class sergeants, eight sergeants, twelve corporals, two cooks, forty-one first class privates, eight privates.

A radio company of the signal corps shall consist of one captain, two first lieutenants, and a maximum enlisted strength of the different grades, as follows: one master signal electrician, six first class sergeants, ten sergeants, fifteen corporals, two cooks, thirty-seven first class privates, six privates.

There shall also be a telegraph and telephone detachment of the signal corps and an aero company of the signal corps, which organizations shall be attached to the headquarters of the battalion.

A telegraph and telephone detachment of the signal corps shall consist of: one first lieutenant, and a maximum enlisted strength of the different grades, as follows: one first class sergeant, three sergeants, three corporals, seven first class privates, three privates.

An aero company of the signal corps shall consist of one captain, five first lieutenants, and a maximum enlisted strength of the different grades as follows: one master signal electrician, two first class sergeants, five sergeants, nine corporals, two cooks, fourteen first class privates, six privates. (*Amended by L. 1916, ch. 474, in effect May 9, 1916.*)

§ 35. **Infantry.**—A regiment of infantry shall consist of:

One colonel.

One lieutenant-colonel.

One captain (inspector small arms practice).

One chaplain.

One headquarters company.

One supply company.

One machine gun company.

Three battalions.

The minimum enlisted strength shall be nine hundred and eighteen.

The maximum enlisted strength shall be one thousand eight hundred and thirty-six.

A battalion of infantry shall consist of:

One major.

Four companies.

The minimum enlisted strength shall be two hundred and sixty.

A company of a battalion of infantry shall consist of:

One captain.

One first lieutenant.

One second lieutenant.

One first sergeant.

One quartermaster sergeant.

Four sergeants.

Six corporals.

Two cooks.

One artificer.

Two musicians.

Forty-eight privates.

The minimum enlisted strength, exclusive of enlisted men detailed to headquarters, supply and machine gun companies, shall be sixty-five.

The maximum enlisted strength shall be one hundred and fifty.

The governor may, upon the recommendation of the major-general, increase the number of sergeants in a company of infantry to six, of corporals to ten, and of privates to one hundred and twenty-seven.

A headquarters company, infantry, shall consist of:

One captain (regimental adjutant).

Three first lieutenants (battalion adjutants).

Band section:

One chief musician.

One principal musician.

One drum major.

Four sergeants.

Eight corporals.

One cook.

Thirteen privates (one being a detailed private and acting cook).

Non-commissioned staff section:

One regimental sergeant major.

Two color sergeants.

Three battalion sergeants major.

L. 1916, ch. 564.

Cavalry.

§ 36.

Mounted orderly section (detailed from companies of battalions).

One sergeant.

Nineteen privates.

A supply company, infantry, shall consist of:

One captain (regimental quartermaster).

One captain (regimental commissary) when not on duty with machine gun company.

Three second lieutenants (battalion quartermasters and commissaries), when one is not on duty with machine gun company.

One regimental quartermaster sergeant.

One regimental commissary sergeant.

Three sergeants (detailed from companies of battalions).

Two corporals (detailed from companies of battalions).

Twenty-six privates (detailed from companies of battalions).

A machine gun company, infantry, shall consist of:

One captain (regimental commissary).

One second lieutenant (battalion quartermaster and commissary).

Eight sergeants (detailed from companies of battalions).

Six corporals (detailed from companies of battalions).

Thirty-six privates (detailed from companies of battalions). (*Amended by L. 1916, ch. 564, in effect May 15, 1916.*)

§ 36. Cavalry.—A regiment of cavalry shall consist of:

One colonel.

One lieutenant-colonel.

One captain (adjutant).

One captain (inspector small arms practice).

One chaplain.

Two veterinarians.

One headquarters troop.

One machine gun troop.

Three squadrons.

The minimum enlisted strength shall be nine hundred and nineteen.

The maximum enlisted strength shall be one thousand, two hundred and thirty-six.

A squadron of cavalry shall consist of:

One major.

One second lieutenant (squadron quartermaster and commissary).

One squadron sergeant major.

One squadron service detachment (three privates detailed from troops of the squadron).

Four troops.

Its minimum enlisted strength shall be two hundred and ninety-five or six.

A separate squadron of cavalry shall consist of:

One major.
One first lieutenant (squadron adjutant).
One first lieutenant (inspector small arms practice).
One second lieutenant (squadron quartermaster and commissary).
One veterinarian.
One squadron sergeant major.
One squadron service detachment (three privates detailed from troops of the squadron).
Four troops.
A troop of cavalry shall consist of:
One captain.
One first lieutenant.
One second lieutenant.
One first sergeant.
One quartermaster sergeant.
Six sergeants.
Six corporals.
Two cooks.
One farrier.
One horseshoer.
One saddler.
One wagoner.
Two trumpeters.
Forty-three privates.
Its minimum enlisted strength, exclusive of enlisted men for detail, shall be sixty-five.
Its maximum enlisted strength shall be one hundred.
The governor may, upon the recommendation of the major-general, increase the number of corporals to eight and of privates to seventy-six.
A headquarters troop, cavalry, shall consist of:
One captain (regimental quartermaster).
Two first lieutenants (squadron adjutants).
Service detachment (detailed):
One sergeant.
Twelve wagoners.
Sixteen privates.
Non-commissioned staff:
One regimental sergeant major.
One regimental quartermaster sergeant.
One regimental commissary sergeant.
Two color sergeants.
Band:
One chief musician.
One chief trumpeter.
One principal musician.

L. 1916, ch. 564.

Field artillery.

§ 37.

One drum major.

Four sergeants.

Eight corporals.

One cook.

Eleven privates.

A machine gun troop, cavalry, shall consist of:

One captain (regimental commissary).

One first lieutenant (squadron adjutant).

Eight sergeants (detailed from troops of the squadrons).

Six corporals (detailed from troops of the squadrons).

Fifty-one privates (detailed from troops of squadrons). (*Amended by L. 1916, ch. 564, in effect May 15, 1916.*)

§ 37. **Field artillery.**—A regiment of field artillery shall consist of:

One colonel.

One lieutenant-colonel.

One captain (adjutant).

One captain (quartermaster).

One captain (commissary).

One chaplain.

Two veterinarians.

One sergeant major.

One quartermaster sergeant.

One commissary sergeant.

Two color sergeants.

Five mounted orderlies.

One headquarters detachment.

One band.

Two battalions.

The minimum enlisted strength of a regiment of field artillery shall be eight hundred and seventy-seven.

The maximum enlisted strength of a regiment of field artillery shall be one thousand one hundred and twenty-eight.

A battalion of field artillery shall consist of:

One major.

One captain (battalion adjutant).

One first or second lieutenant (battalion quartermaster and commissary).

One sergeant major.

One quartermaster sergeant.

Two mounted orderlies.

Three batteries.

The minimum enlisted strength shall be four hundred and fourteen. In each regiment one battalion quartermaster and commissary shall be a first lieutenant and the other a second lieutenant.

A battery of field artillery shall consist of:

One captain.

Two first lieutenants.

Two second lieutenants.

One first sergeant.

One quartermaster-sergeant.

One stable sergeant.

Six sergeants.

Thirteen corporals (two scouts, one signal detail).

One chief mechanic.

Four mechanics.

Two musicians.

Three cooks.

One hundred and one privates (two with signal detail).

The minimum enlisted strength, exclusive of enlisted men for detail to headquarters detachment, shall be one hundred and thirty-three.

The maximum enlisted strength, exclusive of enlisted men for detail to headquarters detachment, shall be one hundred and seventy-one.

The governor may, upon the recommendation of the major-general, exclusive of enlisted men for detail to headquarters detachment, increase the number of sergeants in a battery of field artillery to seven (one mess sergeant), of corporals to twenty (two scouts, one signal detail), of mechanics to seven, of musicians to three and of privates to one hundred and twenty-seven.

A headquarters detachment of a regiment of field artillery shall consist of:

One sergeant (scout, regimental detail).

Six corporals (scout, battalion detail).

Nine privates (scouts, three regimental details, six battalion details).

One sergeant (regimental signal detail).

Two corporals (battalion signal details).

Three privates one regimental (two battalion signal details).

Two mechanics (one as horseshoer and one as saddler, regimental details).

Three musicians (one each regimental and battalion details).

Six drivers (reel carts, two each regimental and battalion details).

These men, consisting of the regimental and battalion details, form the headquarters detachment. They will be detailed from batteries and for that purpose will be additional therein in the grades indicated.

A field artillery band shall consist of:

One chief musician.

One drum major.

One principal musician.

One chief trumpeter.

Four sergeants.

Eight corporals.

One cook.

Eleven privates. (*Amended by L. 1916, ch. 564, in effect May 15, 1916.*)

§ 38. **Coast artillery corps.**—There shall be a coast artillery corps, which shall belong to the line of the national guard, to consist of two colonels, three lieutenant-colonels, eight majors, forty-one captains, (eight unassigned for staff duty), forty-one first lieutenants, (eight unassigned for staff duty), forty-one second lieutenants, (eight unassigned for staff duty), two chaplains, three sergeants-major, senior grade, four master electricians, eleven engineers, sixteen electrician sergeants, first class, sixteen electrician sergeants, second class, eight sergeants-major, junior grade, eight master gunners, eleven firemen, three bands and thirty-three companies.

A company of coast artillery shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster sergeant, four sergeants, six corporals, two cooks, two mechanics, two musicians, and forty-seven privates.

The minimum enlisted strength of a coast artillery company shall be sixty-five. The maximum enlisted strength of a coast artillery company shall be one hundred and nine.

The governor may, upon the recommendation of the major-general, increase the number of sergeants in a coast artillery company to eight, of corporals to twelve, and of privates to eighty-one.

A coast artillery band shall consist of one chief musician, one chief trumpeter, one principal musician, one drum major, four sergeants, eight corporals, one cook and eleven privates.

For the purposes of administration, drill and instruction the coast artillery corps shall be organized into three coast defense commands. There may be one band for each coast defense command.

The following rated enlisted men shall be allowed:

For each gun company: One plotter; one observer, first class; one observer, second class; two gun commanders; and two gun pointers.

For each mortar company: One plotter; one observer, first class; two observers, second class; and three gun commanders.

For fort commands: Three observers, first class.

For fire commands: Nine plotters; nine observers, first class; eight observers, second class.

The governor in his discretion may increase the strength of the coast artillery hereby authorized. In making such increase the number of additional colonels, lieutenant-colonels, majors, captains, first lieutenants, second lieutenants, sergeants-major (senior grade), master electricians, engineers, electrician sergeants first class, electrician sergeants second class, master gunners, sergeants-major (junior grade), and fireman shall be in approximately the same proportion to the number of additional companies

§§ 41, 50.

Naval militia; organization.

L. 1916, ch. 565.

organized as is herein prescribed. (*Amended by L. 1909, ch. 370, L. 1911, ch. 795, and L. 1916, ch. 564, in effect May 15, 1916.*)

§ 41. **Training detachments.**—The governor from time to time may organize at places other than the station of a command training detachments of officers and men who shall form a part of such command. The enlisted men of a training detachment shall be enlisted in the companies of the command for which the detachment is formed, and the officers detailed to serve with a detachment shall be selected from the officers of the command for which the detachment is formed. Whenever in the opinion of the major-general a training detachment has an enlisted strength which entitles it to armory accommodations, he may issue a certificate in which he shall state that fact and further that the training detachment is entitled to the armory accommodations of a company. If and when the certificate is approved by the adjutant-general of the state the training detachment to which it relates shall for the purposes of armory accommodations be deemed a company and shall be entitled to the benefits of all the provisions in article nine of this chapter relating to a company. A training detachment may with the approval of the major-general form a civil organization and adopt by-laws and all the provisions of this chapter relating to such associations and their by-laws shall be applicable to such detachments. A training detachment shall receive the allowances authorized for separate companies in section two hundred and sixteen of this chapter. When the amount of one dollar and sixty cents for each enlisted man present for duty at each of the five compulsory drills or parades is allowed a company of which there are enlisted men serving in a training detachment, the proportionate amount of such allowance earned by the enlisted men of the detachment shall be deducted from the aggregate allowance of the company and with the fines collected from the enlisted men of the detachment shall be credited to and form part of the military fund of the detachment. The board of audit of a training* detachment shall consist of the immediate commanding officer thereof and one other officer serving with the detachment, or if there be not that number available serving with the detachment, the deficiency may be made up by officers of the command for which the detachment is formed detailed for the purpose by the commanding officer of such command.

The word "company," as used in this section, shall include a troop and a battery. (*Amended by L. 1916, ch. 471, in effect May 9, 1916.*)

§ 50.—(1) Composition, strength and command. The organizations forming the naval militia at this date, such others as may be organized hereafter and such persons as may enlist or be appointed or commissioned therein shall constitute the naval militia of this state.

(2) The governor may when in his judgment the efficiency of the naval militia will be thereby increased, create new organizations, and alter,

* So in original.

L. 1916, ch. 565.

Naval militia; organization.

§§ 51, 52.

divide, consolidate, annex, disband or reorganize any or all the organizations therein.

(3) The governor shall have power at any time to change the organization of the naval militia herein prescribed, so as to conform to any organization, system of drill or instruction, which may be adopted for the navy of the United States and increase or decrease for that purpose the number of officers, chief petty officers and petty officers in those organizations, and change the designations of officers or enlisted men.

(4) The strength of the naval militia in time of peace shall not exceed two thousand enlisted men, but in time of war, invasion, insurrection or imminent danger thereof, the governor shall have power to increase this force beyond said two thousand enlisted men and organize it as the exigencies of the service may require. (*Amended by L. 1916, ch. 565, in effect May 15, 1916.*)

L. 1916, ch. 565, § 2. (a) Where a change in rank or rating or in form of organization is made necessary by this act, such change need not be completed before February sixteenth, nineteen hundred and seventeen.

(b) This act shall not change or invalidate any existing commission or warrant, or render supernumerary or change the status of any commissioned officer, noncommissioned officer or enlisted man in the naval militia, until said February sixteenth, nineteen hundred and seventeen.

§ 51.—(1) Brigade. The naval militia of this state shall constitute a brigade composed of at least twenty-four divisions and marine companies which may be organized into battalions. The brigade shall be commanded by a commodore with the following staff:

One captain, chief of staff.

One lieutenant commander, navigator and signal officer.

One lieutenant commander, gunnery officer.

One lieutenant commander (engineering duties only), engineer officer.

One lieutenant commander, aide (who may be assigned to additional duty as judge advocate).

One surgeon, rank of lieutenant commander, medical officer.

One paymaster, rank of lieutenant commander, paymaster.

One chaplain, rank of commander, chaplain.

(a) The following chief petty officers will be allowed for the headquarters' staff of a brigade:

Three chief yeomen. (*Amended by L. 1911, ch. 282, and L. 1916, ch. 565, in effect May 15, 1916.*)

§ 52. Battalions.—(1) A battalion of eight or more divisions or marine companies shall be commanded by a line officer of not higher grade than captain with the following staff:

One commander, executive officer.

One lieutenant commander, first lieutenant.

One lieutenant commander, navigator.

One lieutenant commander (engineering duties only), engineer officer (for two or more engineer divisions, otherwise lieutenant).

One lieutenant commander, gunnery officer.

One lieutenant (junior grade), signal officer.

One surgeon, rank of lieutenant commander, medical officer.

One passed assistant surgeon (rank of lieutenant), assistant medical officer.

One assistant surgeon (rank of lieutenant, junior grade), assistant medical officer.

One paymaster (rank of lieutenant commander), paymaster.

One passed assistant paymaster (rank of lieutenant), assistant paymaster.

One assistant paymaster (rank of lieutenant, junior grade), assistant paymaster.

One chaplain (rank of commander), chaplain.

(a) The following chief petty officers and petty officers will be allowed for the headquarters' staff:

One chief master-at-arms.

One chief boatswain's mate.

One chief gunner's mate.

One chief quartermaster.

One chief carpenter's mate.

One chief yeoman.

Seven yeomen (first, second or third class).

One chief commissary steward.

One commissary steward.

Ten ship's cooks or bakers, first class.

Two hospital stewards.

Ten hospital apprentices, first class.

And the following other enlisted men:

One cabin steward, } for organizations having a cabin mess.
One cabin cook, }

One mess attendant for each officer of rank of commander or higher.

One wardroom steward.

One wardroom cook.

One mess attendant for every four officers in the battalion.

(b) The following petty officers and enlisted men, not to total more than twenty-three men, will be allowed for the band:

One bandmaster.

First musicians.

Musicians, first class.

Musicians, second class.

(2) A battalion of four, five, six or seven divisions or marine companies shall be commanded by a line officer of not higher grade than commander with the following staff:

One lieutenant commander, executive officer.

One lieutenant commander (engineering duties only) engineer officer (for two or more engineer divisions, otherwise lieutenant).

One lieutenant, navigator.

One lieutenant, gunnery officer.

One lieutenant, junior grade, signal officer.

One passed assistant surgeon (rank of lieutenant), medical officer.

One assistant surgeon (rank of lieutenant, junior grade), assistant medical officer.

One paymaster (rank of lieutenant), paymaster.

One assistant paymaster (rank of lieutenant, junior grade), assistant paymaster.

One chaplain (rank of lieutenant commander), chaplain.

(a) The following chief petty officers and petty officers will be allowed for the headquarters' staff:

One chief boatswain's mate.

One chief quartermaster.

One chief carpenter's mate.

One chief yeoman.

One yeoman for each division.

One chief commissary steward.

One commissary steward.

One ship's cook or baker for each division.

One hospital steward.

One hospital apprentice, first class for each division.

And the following other enlisted men:

One cabin steward, } for organizations having a cabin mess.
One cabin cook, }

One mess attendant.

One wardroom steward.

One wardroom cook.

One mess attendant for every four officers in the battalion.

(3) The following petty officers and enlisted men, not to total more than seventeen men, will be allowed for the band:

One bandmaster.

First musicians.

Musicians, first class.

Musicians, second class.

(4) A battalion of two or three divisions or marine companies shall be commanded by a line officer of a not higher grade than lieutenant commander with the following staff:

One lieutenant, executive officer.

One lieutenant (engineering duties only), engineer officer.

One lieutenant, junior grade, gunnery and signal officer.

One passed assistant surgeon (rank of lieutenant), medical officer.

One assistant surgeon (rank of lieutenant, junior grade), assistant medical officer.

One passed assistant paymaster (rank of lieutenant), paymaster.

One chaplain (rank of lieutenant), chaplain.

(a) The following chief petty officers and petty officers will be allowed for the headquarters staff:

One chief quartermaster.

One chief carpenter's mate.

One chief yeoman.

One yeoman for each division.

One commissary steward.

One ship's cook or baker for each division.

One hospital steward.

One hospital apprentice, first class for each division.

And the following other enlisted men:

One wardroom steward.

One wardroom cook.

One mess attendant for every four officers in the battalion.

(5) When a battalion has divisions or marine companies located beyond the limits of one city, an additional assistant surgeon with the rank of lieutenant, junior grade, will be allowed in each city, but a total of one medical officer for each outlying location shall not be exceeded. (*Amended by L. 1916, ch. 565, in effect May 15, 1916.*)

§ 53.—(1) Divisions. A deck division shall consist of forty-eight enlisted men, and may have three officers as follows:

One lieutenant.

One lieutenant, junior grade.

One ensign.

The enlisted strength may be divided as follows:

Not more than six petty officers, first class, one of whom may be made chief petty officer in any of the following ratings:

Chief master-at-arms.

Chief boatswain's mate.

Chief gunner's mate.

Chief quartermaster.

Not more than twelve petty officers, first and second class combined.

Not more than fifteen petty officers, first, second and third class combined.

(a) Of the fifteen petty officers of the seamen branch of a deck division there must be:

Not less than four nor more than nine boatswain's mates and coxswains.

Not less than one nor more than three gunner's mates.

Not less than one chief turret captain or turret captain, first class (only

for divisions actually assigned to turrets on a ship assigned to that organization).

(b) Each deck division may enroll as a part of the fifteen petty officers mentioned in paragraph (a) the following petty officers:

Not more than one master-at-arms.

Two quartermasters.

Two yeomen.

One carpenter's mate, first, second or third class.

One sailmaker's mate.

One shipfitter, first or second class.

One plumber and fitter.

(c) The other enlisted men of the seamen branch and artificer branch (deck force) shall consist of the following ratings:

Thirty-three seamen, ordinary seamen, apprentice seamen or landsmen (for special positions), rated according to efficiency.

(d) In addition, the following enlisted men, who are not petty officers, may be enrolled in each division:

One bugler.

One ship's cook, third or fourth class.

One hospital apprentice.

One shipwright.

(e) A deck division consisting of more than sixty enlisted men may have:

One additional ensign.

One additional petty officer of the seaman branch only, of the first, second or third class, for each additional five enlisted men.

(2) An engineer division shall consist of forty-eight enlisted men, and may have three officers, as follows:

One lieutenant (engineering duties only).

One lieutenant, junior grade (engineering duties only).

One ensign (engineering duties only).

The enlisted strength may be divided as follows:

Three chief machinist's mates.

Three machinist's mates, first or second class.

One chief water tender.

Three water tenders.

Three oilers.

One blacksmith or water tender.

One boilermaker or water tender.

One coppersmith or water tender.

One chief electrician.

Three electricians, first, second or third class.

One electrician (radio) chief, first, second or third class.

One yeoman, first or second class.

One ship's cook, third or fourth class.

(a) The other enlisted men of the artificer branch (engineer force) shall consist of the following ratings:

Twenty-five firemen, first class and second class, coal passers or landsmen (for special positions), rated according to efficiency.

(b) An engineer division consisting of more than sixty enlisted men may have:

One additional ensign (engineering duties only).

One additional petty officer of the artificer branch (engineer force) of the first, second or third class for each additional five enlisted men.

(c) In a locality where there are insufficient men available to form an engineer division, and there already exists an organized deck division, chief petty officers, petty officers, and other enlisted men of the artificer branch (engineer force) may be additionally enrolled in such deck division, with such ratings as they may be qualified to fill, until such time as there is a sufficient number of them to form a separate engineer division, when such division shall be formed.

(d) In cases where sixteen or more additional enlisted men of the artificer branch (engineer force) are enrolled in a deck division there will be allowed an additional ensign (engineering duties only).

(e) In a locality where there are insufficient men to form an engineer division, an engineer section with one officer and twenty-four enlisted men on its rolls may be organized, but no engineer section shall have less than twenty enlisted men on its rolls. An engineer section will be considered an administrative unit until merged into an engineer division.

(f) The following rank and ratings will be allowed the officer and enlisted men of an engineer section:

One ensign (engineering duties only).

The enlisted strength may be divided as follows:

One chief machinist's mate.

Three machinist's mates, first class.

Three water tenders.

Three oilers.

One boilermaker.

One coppersmith.

(g) The other enlisted men of the artificer branch (engineer force) shall consist of the following ratings:

Twelve firemen, first class and second class, coal passers or landsmen (for special positions), rated according to efficiency.

(3) An aeronautic division shall consist of two aeronautic sections and shall be commanded by an officer of not higher rank than lieutenant commander (aeronautic duties only).

(a) An aeronautic section shall consist of twenty-three enlisted men, and may have five officers, as follows:

One lieutenant (aeronautic duties only).

Two lieutenants, junior grade (aeronautic duties only).

Two ensigns (aeronautic duties only).

The enlisted strength may be divided as follows:

One chief machinist's mate, chief aeronautic machinist.

One machinist's mate, first class, aeronautic machinist, first class.

One machinist's mate, second class, aeronautic machinist, second class.

Eight electricians, third class (gen.) aeronautic machinist, third class.

One carpenter's mate, second class, aeronautic mechanic, second class.

Eight carpenter's mates, third class, aeronautic mechanic, third class.

One yeoman, third class.

One hospital apprentice.

(b) In a locality where there are insufficient men to form an aeronautic section and there already exists an organized deck or engineer division, an officer and not more than four enlisted men for aeronautic duty only may be additionally enrolled in such divisions until such time as there is a sufficient number of them to form a separate aeronautic section.

(c) In cases where four additional enlisted men of the aeronautic branch are enrolled in a deck or engineer division there will be allowed an additional ensign (aeronautic duties only).

(d) The following additional chief petty officers, petty officers, and other enlisted men of the seamen branch, artificer branch (engineer force), and special branch will be allowed each aeronautical division:

One chief boatswain's mate.

One boatswain's mate, first class.

One yeoman, second class.

One electrician, first class (radio).

One seaman (signalman).

(4) A deck or engineer division consisting of more than eighty enlisted men, or an aeronautic section of more than six officers and twenty-eight enlisted men may be maintained only by permission of the commanding officer, naval militia.

(5) The minimum strength of a deck or engineer division or a marine company shall be forty enlisted men; the minimum strength of an aeronautic section shall be one officer and five enlisted men. (*Amended by L. 1911, ch. 282, and L. 1916, ch. 565, in effect May 15, 1916.*)

§ 54. **Marine companies.**—(1) A marine company shall consist of forty-eight enlisted men, and may have three officers, as follows:

One captain.

One first lieutenant.

One second lieutenant.

The enlisted strength may be divided as follows:

One first sergeant.

One gunnery sergeant.

§§ 55, 56.

Civilian cooks.

L. 1916, ch. 565.

Four sergeants.

Five corporals.

One drummer.

One trumpeter.

Thirty-five privates.

(a) For each additional eight privates over thirty-five an additional corporal may be appointed, and for each additional sixteen privates over thirty-five an additional sergeant may be appointed.

(b) For a marine company of more than sixty enlisted men there will be allowed an additional second lieutenant.

(c) In a locality where there are insufficient men available to form a marine company, a marine section with one officer and twenty-four enlisted men on its rolls may be organized, but no marine section shall have less than twenty enlisted men on its rolls. A marine section will be considered an administrative unit until merged into a marine company.

(d) The following rank and ratings will be allowed the officer and enlisted men of a marine section:

One first lieutenant.

One first sergeant.

Two sergeants.

Three corporals.

One trumpeter.

Seventeen privates.

(e) Whenever a marine company increases in size to twelve squads, it may be divided into two companies. (*Amended by L. 1911, ch. 282, and L. 1916, ch. 565, in effect May 15, 1916.*)

§ 55. **Disbandments.**—When a battalion shall fall below two divisions it shall be disbanded. The remaining division shall become a separate division. When a division shall fall below the minimum strength prescribed by law it may be disbanded. (*Amended by L. 1916, ch. 565, in effect May 15, 1916.*)

§ 56. **Civilian cooks.**—The governor may authorize the employment of cooks by troops on duty under his orders or called out in aid of the civil authority, when such troops do not receive cooked rations, and such cooks shall receive as compensation for their services the pay of petty officers, second-class, while thus employed, paid in the manner that the officers and enlisted men with whom they are serving are paid, provided such duty be not on vessels of the United States navy, other than in the status of outright loan. The number of cooks that may thus be employed shall not exceed two to a division or company. For the headquarters of a brigade and of a battalion the governor may prescribe the number of cooks that may be employed. All civilian cooks shall be subject while thus employed, to the military law, the articles of war and the regulations as if they were regu-

L. 1916, ch. 565.

Naval militia; commissioned officers.

§§ 57, 58.

larly enlisted men of the naval militia. (*Amended by L. 1911, ch. 282, and L. 1916, ch. 565, in effect May 15, 1916.*)

The provision making civilian cooks subject to the Military Law, simply refers to discipline and not to any duty the state assumes toward them. They are not entitled to relief under section 223. Atty. Genl. Opin. (1915), 4 State Dep Rep. 571.

§ 57. **Retirement of commissioned officers.**—A commanding officer of the naval militia, holding the office of commodore may, at his own request, be withdrawn from active service and command and placed upon the retired list by the governor, with rank on the retired list of the grade next higher than that held by him in active service, provided he has served not less than twenty-five years in the naval militia, or not less than ten years in the naval militia and fifteen years in the United States navy. Any commissioned officer of the naval militia may be similarly withdrawn and placed upon the retired list with the rank of the grade next higher, provided he served in the regular or volunteer navy of the United States during the war of the rebellion, and has served in the naval militia not less than five years. Any commissioned officer of the naval militia who shall be retired under section eighty-two, upon his own request, shall have rank on the retired list of the grade next higher to that held by him in active service, provided he shall have been an officer in the United States navy in time of war. (*Amended by L. 1909, ch. 233, and L. 1916, ch. 565, in effect May 15, 1916.*)

§ 58.—(1) Eligibility required to receive a commission in the naval militia. Commissioned officers in the naval militia must be citizens of the United States and of the age of eighteen years and upwards. No person who has been expelled or dishonorably discharged from any military or naval organization of the state shall be commissioned unless he has re-enlisted and served as provided in this chapter. No person shall be commissioned unless he shall possess the additional requirements herein prescribed for the particular office to which he is to be commissioned.

(2) A commodore shall have been in the active service of a state as a line officer of the naval militia or in the service of the United States as a line officer of the navy or in all combined for at least ten years. A captain of the naval militia at the time of his appointment shall have performed the same service for at least five years. A commander or lieutenant-commander for at least three years. Staff officers or officers below the grade of commodore except judge advocates, medical officers and chaplains must have served one year immediately preceding their appointment in the naval militia of this state, except that they may be credited with service in the United States navy or revenue marine, or if not in active service at the time of their appointment they must have had at least one year's service in the national guard or naval militia of the state or the army or navy of

§§ 59, 70.

Naval militia; commissioned officers.

L. 1916, ch. 565.

the United States or both combined. Staff officers of the brigade, except judge advocates, surgeons and engineers, must either be selected from the commissioned officers in active service in the naval militia of this state, who for one year immediately preceding their appointments, have been in active service in such naval militia as commissioned officers, or if not in active service at the time of their appointment they must have had at least two years' previous service in the active militia of this state or in the army or navy of the United States or both combined as commissioned officer. Surgeons and assistant surgeons must be graduates of an incorporated school of medicine and of at least five years' practice if of the grade of lieutenant-commander; of at least three years' practice if of the grade of lieutenant; and of at least two years' practice if of the grade of lieutenant junior grade. A lieutenant-commander as engineer officer shall have been a commissioned marine engineer in the service of the United States, or shall hold a United States marine license not below the grade of chief engineer of ocean steamers of at least three thousand five hundred tons burthen. A lieutenant and a lieutenant junior grade as engineer officers shall have been a commissioned marine engineer in the service of the United States or shall hold a United States marine license not below the grade of chief engineer of inland steamers of at least one thousand and five hundred tons burthen respectively. Engineer officers who have passed the examination required by the navy department for line officers for engineering duty only in the naval militia and who have actually served on vessels of the navy for one or more naval militia cruises as engineer officers shall be deemed to have complied with the relevant provisions of this section as regards eligibility. A judge advocate must be a counsellor-at-law of the supreme court of this state of at least five years' standing if of the grade of lieutenant-commander or at least three years' standing if of the grade of lieutenant. A chaplain must be a regularly ordained minister of some religious denomination. (*Amended by L. 1916, ch. 538, and L. 1916, ch. 565, both taking effect on the same day.*)

Note.—The section as amended by L. 1916, ch. 565, is here inserted. The only difference in the section as amended by ch. 538 is the word "commodore" is substituted for the word "brigade" in the fifth sentence of the second paragraph.

§ 59. **Appointed officer of the naval militia.**—The commodore of the naval militia shall be appointed by the governor. Officers of the naval militia, excepting the commodore, shall be appointed by the governor upon the recommendation of their immediate commanding officers, approved by the commanding officer of the naval militia. When the governor desires to create new organizations he shall have the power in the first instance to appoint all the officers necessary to commence and complete such organization. (*Amended by L. 1911, ch. 282, and L. 1916, ch. 565, in effect May 15, 1916.*)

§ 70. **Commissions.**—All officers shall be commissioned by the governor at his discretion; but no one shall be commissioned unless the conditions set

L. 1916, ch. 568.

Reserve officers.

§ 80.

forth in the next two sections have been complied with, and no one shall be recognized as an officer unless he shall have been duly commissioned, and shall have taken the oath of office. Commissions shall be issued to officers in the arm, corps or department of the service of which they are a part and not in any particular regiment or unit. The acceptance of a commission in the militia of this state shall be deemed a resignation by the person accepting the same, of all other commissions held by him in such militia. Nothing herein shall apply to or affect the acceptance and holding of brevet commissions. (*Amended by L. 1916, ch. 473, in effect May 9, 1916.*)

§ 80. **Reserve officers.**—There shall be a reserve list for commissioned officers who have served in the active militia. This list shall include those commissioned officers who are lawfully carried on the reserve list at the date this act takes effect and such others as may be placed thereon in accordance with the provisions of this chapter. Any officer of the active militia on active duty may be placed by the governor on the reserve list on his own request approved by his intermediate commanding officers. Any person who has served as aide to the governor during the ten years last passed; or as a commissioned officer in the active militia, or as a commissioned officer of the army, navy or marine corps of the United States, and who has been honorably discharged therefrom may be commissioned and placed upon the reserve list by the governor with the highest rank previously held by him after passing an inspection and such examination as the governor may deem necessary. The governor may cause the officers on the reserve list to be inspected and examined by an examining board organized pursuant to this chapter whenever he shall deem it necessary so to do. Notice of the time, place and scope of such inspection and examination shall be mailed to such reserve officer at his last known address not less than six weeks prior to the date thereof and an officer failing to appear or to pass such inspection and examination may, upon the findings of such board, be placed upon the retired list or be discharged in accordance with his previous service and the privileges thereof. Time spent on the reserve list, shall not be credited to an officer in the computation of seniority, pay, length of service or the privileges and exemptions pertaining thereto. Resignations, retirements and discharges of officers on the reserve list shall be made in the same manner as provided by this chapter, for officers on active duty. Officers of the active militia who shall be rendered surplus by reduction or disbandment of organizations or by the abolishing of their office or in any manner provided by this chapter, shall be withdrawn from active duty and placed upon the reserve list. The governor may upon the recommendation of the commanding officer of the national guard or of the naval militia respectively detail officers on the reserve list for active duty, in which case they shall rank in their grade from the date of such detail and the governor may return them to the reserve list at his discretion. An officer on the reserve list shall not be detailed to active duty for more

than ninety days until he has passed the examination prescribed for the office to perform the duties of which he is detailed. (*Amended by L. 1909, ch. 371, L. 1911, ch. 285, L. 1914, ch. 191, L. 1915, ch. 460, and L. 1916, ch. 568, in effect May 15, 1916.*)

§ 82. Retirement and discharge.—Any officer of the active militia who has reached the age of sixty-four years shall be placed upon the retired list by the governor. Any commissioned officer who shall have served in the same grade for the continuous period of ten years, or in the military or naval service of the state as a commissioned officer for fifteen years, or in the case of an officer of the naval militia retiring such service may have been in the naval service of the state and the United States combined for fifteen years, provided at least ten years of such service shall have been in the state, may, upon his own request, be placed upon the retired list and withdrawn from active service and command by the governor. Any commissioned officer who has become or shall hereafter become disabled, and thereby incapable of performing the duties of his office, shall be withdrawn from active service and command and placed on the retired list. Any commissioned officer who has become, or who shall hereafter become unfit or incompetent, and thereby incapable of performing the duties of his office, shall be discharged upon the recommendation of his commanding officer or the recommendation of an inspecting officer. Such retirement or discharge shall be by order of the governor, and in either case shall be subject to the provisions of this section. Before making such order, a board of not less than five commissioned officers, one of whom shall be a surgeon, shall be appointed, whose duty it shall be to determine the facts as to the nature and cause of incapacity of such officer as appears disabled or unfit, or incompetent, from any cause, to perform military service, and whose case shall be referred to it. No officer, whose grade or promotion would be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Such board is hereby invested with the powers of courts of inquiry and courts martial, and whenever it finds an officer incapacitated for active service, shall report such fact to the governor, stating cause of incapacity, whether from disability, unfitness, or incompetency, and if he approves such finding, such officer shall be placed on the retired list or discharged, as provided in this article. The members of the board shall, before entering upon the discharge of their duties, be sworn to an honest and impartial performance of their duties as members of such board. No officer shall be placed upon the retired list or discharged by the action of such board, without having had a fair and full hearing before the board, if upon due notice he shall demand it. It shall not be necessary to refer any case for the action of such board arising under this section, unless the officer designated to be placed upon the retired list or discharged, shall within twenty days after being notified

L. 1916, ch. 355.

Use of troops in civil disorders.

§§ 97, 115.

that he will be so retired or discharged, serve on the adjutant-general of the state a notice in writing that he demands a hearing and examination before such board. Boards for the national guard shall be appointed by the governor for officers above the grade of colonel, and by the major-general for officers below the grade of brigadier-general; boards for the naval militia shall be appointed by the governor, and shall be composed of officers of such grade or rank as he may determine. The governor may withdraw from active service and command and place upon the retired list any officer who has been twenty-five years in the active service of the national guard, on the recommendation of the commanding officer of his organization, the commanding officer of the brigade, and the major-general, and in the case of officers of the corps of engineers and the coast artillery corps and officers of staff corps and departments, upon the recommendation of the major-general. Vacancies created by the operation of this section shall be filled in the same manner as other vacancies. The governor may in his discretion detail officers from the retired list to active duty and return them to such list in his discretion provided that officers retired for age shall not be detailed to command troops but only to perform duties of staff corps or departments or to sit on military courts or boards. (*Amended by L. 1911, chs. 464 and 770, L. 1916, ch. 470, in effect May 9, 1916.*)

§ 97. **Enlistment papers.**—Every person who enlists or re-enlists shall sign and make oath to an enlistment paper which shall contain an oath of allegiance to the state and the United States, and be in such form as may be prescribed in the regulations issued under this chapter. Such oath shall be taken and subscribed to before any officer above the rank of first lieutenant or lieutenant, junior grade, or before the commanding officer of a troop, battery, company or division and such officers are hereby authorized to administer such oath; but no enlistment shall be valid until it be approved, in regiments and battalions and squadrons not parts of regiments, by the commanding officer thereof; in the corps of engineers by the officer commanding the organized battalions thereof; in the coast artillery corps by the ranking officer commanding the coast defense command; in the quartermaster corps by the officer commanding the corps; in the hospital corps by the chief surgeon, division. A person making a false oath as to any statement contained in such enlistment papers shall upon conviction be deemed guilty of perjury. (*Amended by L. 1911, ch. 283, and L. 1916, ch. 473, in effect May 9, 1916.*)

§ 115. **Use of troops in civil disorders.**—Whenever it shall be made to appear to the governor that there is a breach of the peace, tumult, riot or resistance to process of this state, or imminent danger thereof, the governor may, upon the request of either the sheriff of a county or the mayor of a city, order out any part or all of the military or naval forces of the state in aid of the civil authorities, in the suppression of such disorder. (*Amended by L. 1916, ch. 355, in effect May 1, 1916.*)

§ 137. Delinquency courts for enlisted men.—A delinquency court for the trial of enlisted men shall consist of one commissioned officer, and shall have jurisdiction over the following offenses:

1. Absence without proper excuse from or tardiness without like excuse in attending any drill, parade, encampment, meeting for instruction or other duty ordered by competent authority, or for failure to make any report, account or return ordered by like authority.
2. Disobedience of orders.
3. Neglecting to take proper care of any arms, equipments or military property, or selling, lending or giving away, or wilfully injuring or destroying any arms, equipments or military property whatever.
4. Disrespect to superiors.
5. Drunkenness on duty.
6. Conduct prejudicial to good order and military discipline.
7. Any act contrary to the military law or to the provisions of the regulations for the government of the national guard.
8. Violations of the by-laws, rules and regulations of an association organized pursuant to this chapter.
9. Failure to appear in person before the court when summoned so to do in the manner provided in this chapter.

The court may inflict fines as follows: (1) For absence without proper excuse from or tardiness without like excuse in attending any drill, parade, encampment, meeting for instruction or other duty ordered by competent authority, a fine not less than one nor more than five dollars for each day or part thereof of such absence; and for each failure to make any report, account or return ordered by like authority a fine of not less than one nor more than five dollars for each such failure. (2) For a failure to appear in person before the court when summoned so to do in the manner provided in this chapter a fine of not less than one nor more than five dollars. (3) For any other offense, a fine not exceeding twenty-five dollars, and in addition a sum equal to the value of any property lost or destroyed assessed by the court. The commanding officer of a regiment, or a battalion or squadron not part of a regiment, the officer commanding the organized battalions of the corps of engineers and the officer of the coast artillery corps commanding a coast defense command may each appoint a delinquency court or delinquency courts for the trial of the enlisted men of his command and of any detachment or department attached thereto or detailed for duty therewith, and shall designate the organization, detachments and men subject to the jurisdiction of each court. The commanding officer of each brigade may in like manner appoint a delinquency court or delinquency courts for the trial of enlisted men of any organization, detachment or department under his direct command and shall designate the organizations, detachments and men subject to the jurisdiction of each court. The major-general may in like manner appoint a delinquency court or delinquency courts for the trial of enlisted

men of any organization, detachment, department or corps not herein provided for and shall designate the organizations, detachments, department or corps and men subject to the jurisdiction of each court. The jurisdiction of a delinquency court to try the offenses specified in this section shall be concurrent with that of general courts-martial and garrison courts-martial, but where the officer who is authorized to appoint the court considers that any offense is of sufficient gravity or that the fine which a delinquency court has power to impose is not a sufficient punishment, such officer may recommend that the trial be had before a general court-martial or a garrison court-martial as the case may be. A delinquency court so appointed shall be permanent and continuous. The officer authorized to appoint such court may at pleasure detail and relieve therefrom an officer to hold the same. Proceedings pending before the court shall not abate or be suspended by reason of such relief or new detail, and an officer so detailed shall have full power and authority to do and perform all acts necessary to complete any proceedings pending before the court to which he was appointed, and to carry into effect any judgment, mandate, order or process, made or issued by such court previous to his detail. The court may be held at such times and in such places as the officer holding it may direct. The officer constituting the court may appoint, and at any time remove a clerk thereof, who shall receive a reasonable compensation, to be fixed by such officer with the approval of the officer appointing the court. (*Amended by L. 1910, ch. 108, and L. 1916, ch. 467, in effect May 9, 1916.*)

§ 139. Oaths and procedure of delinquency courts.—Before entering upon his duties each member of a delinquency court shall take an oath of office to the effect that he will well and truly try and determine, according to evidence, all matters between the people of the state of New York and any person or persons who shall come before the court to which he is appointed. This oath need not be taken in the presence of delinquents and may be taken before any officer authorized by law to take acknowledgments of deeds, or before a field officer or the commanding officer of a brigade, all of whom shall administer the oath without fee. When the court is composed of three officers the junior member may administer the oath to the senior member, who in turn may administer it to the other members. The court shall keep records showing the cases tried and the findings and sentences therein but the evidence taken need not be recorded. No challenges shall be allowed in such courts. No formal charges or specifications shall be required in such court, except that when the offense charged is the failure to make any report, account or return or is one specified in the second, third, fourth, fifth, sixth, seventh, eighth, or ninth subdivisions of section one hundred and thirty-seven of this chapter the summons shall specify the offense for which the accused is to be tried and briefly state the facts constituting the same. The return of delinquents and of fines and dues under association by-laws shall take the place of charges and specifications and shall be prima facie evidence of the facts

§§ 143, 188.

Armories; laborers.

L. 1916, ch. 475.

therein stated. (*Amended by L. 1910, ch. 108, and L. 1916, ch. 468, in effect May 9, 1916.*)

§ 143. **Discharge for failure to pay fine.**—An enlisted man fined by a military court who shall neglect or refuse to pay such fine within thirty days after the same was imposed, may, after hearing and proceedings had as required by section one hundred and three of this chapter for the issue of a discharge without honor, be dishonorably discharged from the service by the officer ordering the court without allowance of the time served. (*Amended by L. 1913, ch. 419, and L. 1916, ch. 468, in effect May 9, 1916.*)

§ 188. **Laborers.**—To provide for the proper care and cleanliness of armories and arsenals and of the property therein deposited, the officer having control and charge of the armory or arsenal, may appoint laborers as follows: For armories or arsenals having ten thousand square feet or less of floor surface, one laborer; when the floor surface exceeds twenty thousand square feet, two laborers; and for each twenty thousand in excess of twenty thousand, an additional laborer; boiler and engine rooms, unused cellar room and rooms used for employees' quarters shall not be included in computing such floor surface. In an armory occupied by coast artillery, and to each armory occupied by a battery, a separate division or divisions or an organization of the signal corps in addition to the above, one expert laborer, competent to care for artillery or signal implements, instruments and equipment. There shall also be allowed to each armory in which are stored the implements and instruments of regimental and of battalion headquarters of field artillery, one expert laborer. For all armories in addition to the above there shall be allowed one laborer to each ten horses or mules therein stabled and used for military purposes by the organization quartered therein, and in armories where more than thirty horses or mules are so stabled and used, two additional laborers. In armories of the quartermaster corps and field artillery, in addition to the foregoing, there shall be allowed one laborer for said corps and for each battery of field artillery, for the care of field artillery, harness and equipment. Before any such appointment is made, the necessity for the employment of such laborer or laborers shall be certified by the commanding officer of the division, of the naval militia or of the brigade, as the case may be, and such certificate shall be filed in the office of the disbursing officer of the county in which the armory or arsenal is situated. A certificate of the number of feet of floor surface of each armory or arsenal in which laborers are appointed shall be made by a person designated for the purpose by the armory board of the city of New York where the armory is in said city and where the armory is outside of said city by a person designated for the purpose by the armory commission for the district in which the armory is situated and such certificate when approved by the commanding officer of the division, of the naval militia or brigade, to whose command the organization quartered in such armory or arsenal belongs, shall be filed in the

L. 1916, ch. 355.

Troops in civil disorders; payment.

§§ 198, 211.

office of the disbursing officer of the county in which the armory or arsenal is located except as to counties wholly or partly within the city of New York, when it shall be filed with the comptroller of said city. (*Amended by L. 1910, ch. 19, L. 1911, ch. 102, L. 1913, ch. 558, L. 1914, chs. 159, 163, L. 1915, ch. 290, and L. 1916, ch. 475, in effect May 9, 1916.*)

§ 198. Temporary provision for a new armory or additional employees.—

In case additional armories are established or rented or additional employees employed, pursuant to the provisions of this chapter, for the expense of which no moneys have been collected for the fiscal year in which said armory was established or said employees employed, the officer in charge and control of said armory shall prepare and submit an estimate of cost of maintenance or of such additional labor as provided in section one hundred and ninety-three of this chapter, for the remainder of said fiscal year, and the armory commission shall, if necessary, determine the amount required for the repair, enlargement, renting and equipping such armory as directed in section one hundred and seventy-eight of this chapter. The county treasurer of the county in the bounds of which such armory is established or employees employed is hereby authorized and required to borrow on the faith and credit of his county the amount specified in such estimates and the amount so determined as aforesaid, and to issue certificates of indebtedness therefor, payable on or before the first day of July following the next first day of September, with interest at a rate not exceeding six per centum per annum. The amount so borrowed shall be expended by the county treasurer as follows: The sums for maintenance or labor upon the requisition of the officer in charge and control of the armory as provided by section one hundred and ninety-three of this chapter; the sums for the repair, enlargement, renting and equipping such armory upon the order of the armory commission of the brigade district in which such armory is located. The amount borrowed by said county treasurer with interest thereon, shall be included by the armory commission in its next certificate to the comptroller of the state, and shall be paid to the county treasurer as provided in section one hundred and seventy-eight of this chapter. (*Added by L. 1914, ch. 162, and amended by L. 1916, ch. 472, in effect May 9, 1916.*)

Method of procuring funds necessary for payment of rent for armory.—Atty. Genl. Opin., 6 State Dep. Rep. 484 (1916).

§ 211. Pay of troops when used in civil disorders.—All officers and enlisted men while on duty, or assembled therefor, by order of the governor, upon the request of either the sheriff of a county or mayor of a city, in aid of the civil authorities, in case of riot, tumult, breach of the peace or resistance to process of this state, shall receive the pay set forth in section two hundred and ten of this chapter; and such compensation and the necessary expenses incurred in quartering, caring for, warning for duty and

§ 219a.

Retired officers; compensation.

L. 1916, ch. 609.

transporting and subsisting the troops, as well as the expense incurred for pay, care, and subsistence of officers and enlisted men temporarily disabled in the line of duty, while on such duty, as set forth in section two hundred and twenty-three of this chapter, shall be paid by the county where such service is rendered. The county treasurer of such county shall, upon presentation to him of vouchers and pay-rolls for such expenses and compensation, certified by the commanding officers of the organizations or corps on duty in aid of civil authority in such county or counties, and approved by the major-general, if he be present in command where the duty is performed, or by the commanding officer of the brigade or of the naval militia to which the organizations or corps were attached, forthwith execute in behalf of and in the name of such county, a certificate or certificates of indebtedness for the money required to pay such vouchers and payrolls; such certificates shall bear interest at the rate of not to exceed six per centum per annum, and shall be made payable on the first day of February following the expiration of two months from their issue, and the amount thereof shall be raised in the next tax budget of said county succeeding their issue, and applied to the payment of such certificates. Said county treasurer shall sell such certificates at public or private sale, and apply the proceeds thereof to the payment of such expenses and compensation. In the city of New York the duties hereby imposed upon a county treasurer shall be performed by the comptroller of said city, who shall raise the money necessary to comply with the provisions of this section by the issue and sale of revenue bonds of said city; the sum necessary to pay said bonds shall be included by the board of aldermen and board of estimate and apportionment of said city in its final estimates for expenses of said city for the year succeeding that in which said bonds were issued. Any county treasurer or public officer, who shall neglect or refuse to perform any of the duties required by this section, shall be personally charged with the costs and all necessary disbursements of any action or proceeding brought to compel such performance, together with a reasonable additional allowance to the plaintiff or relator in such action or proceeding, to be fixed by the court. (*Amended by L. 1916, ch. 355, in effect May 1, 1916.*)

§ 219-a. **Retired officers; compensation.**—An officer of the national guard or naval militia who has been a commissioned officer thereof in active service for at least twenty-five years, and who has during fifteen consecutive years of such active service immediately preceding his retirement received an annual compensation from the state for performing military or naval duty and who has been dependent on such compensation for his support shall receive annually from the date of his retirement on reaching the age of sixty-four years, or upon his own application, or for physical disability and during the time he remains on the retired list seventy-five per centum of the annual compensation paid to him, as aforesaid, at the

L. 1916, ch. 564.

Military parades and organizations.

§§ 220, 223, 241.

date of his retirement. (*Added by L. 1916, ch. 609, in effect May 20, 1916.*)

§ 220. **Pensions.**—Every member of the militia who shall be wounded or disabled while in the service of the state, in cases of riot, tumult, breach of the peace, resistance to process, invasion, insurrection, or imminent danger thereof, or whenever called upon in aid of the civil authorities, shall be taken care of and provided for at the expense of the state, and every such member who shall be wounded or disabled or has been so disabled in the performance of any actual service of this state within ten years preceding the application for a pension under this chapter, in case of riots, tumults, breach of the peace, resistance to process, invasion, insurrection or imminent danger thereof, or whenever called upon in aid of the civil authorities, or while engaged in any lawfully ordered parade, drill, encampment or inspection, shall, upon proof of the fact, as hereinafter provided, be placed on the roll of invalid pensioners of the state, and shall receive, out of any moneys in the treasury of the state, not otherwise appropriated, upon the audit of the adjutant-general of the state and approval of the governor, the like pension or reward that persons under similar circumstances receive from the United States, and in case of any wound, injury or disease causing death, then the widow, minor children or dependent mother of such member of the militia shall receive such pension and reward, from the time of receiving the injuries on account of which such pension or reward is allowed. No officer or enlisted man shall be entitled, while in active service, to make application for or to receive a pension. (*Amended by L. 1916, ch. 469, in effect May 9, 1916.*)

Right to pension.—A national guardsman sustaining injuries while on duty, which continued for more than ninety days, is entitled to a pension, especially where he has received no relief for temporary disability. Atty. Genl. Opin. (1915), 4 State Dep. Rep. 571. A private in the National Guard, may be allowed a pension under this section, although he has accepted pay and care for temporary disability. Atty. Genl. Opin., 6 State Dep. Rep. 436 (1915).

§ 223. **Pay or care when injured or disabled in service.**

Civilian cooks are not entitled to the benefit of the relief provided under this section. Atty. Genl. Opin. (1915), 4 State Dep. Rep. 571.

§ 241. **Military parades and organizations by unauthorized bodies prohibited.**—No body of men, other than the active militia and the troops of the United States except such independent military organizations as were on the twenty-third day of April, eighteen hundred and eighty-three, and now are, in existence, and such other organizations as may be formed under the provisions of this chapter, shall associate themselves together as a military company or organization, or parade in public with firearms in any city or town of this state. No body of men shall be granted a certificate of incorporation under any corporate name which shall mislead, or tend to mislead, any person into believing that such corporation is con-

needed with or attached to the national guard or naval militia of this state in any capacity or way whatsoever. In case any such certificate has been heretofore or may hereafter be granted, which in the judgment of the adjutant-general of the state, misleads or tends to mislead anyone into believing that such corporation is connected with or attached to the national guard or naval militia in any capacity or way whatsoever, the adjutant-general of the state shall notify such corporation, in writing, to forthwith discontinue the use of its said corporate name and forthwith take the necessary steps to change its name pursuant to the statute in such case made and provided, to some name not so calculated to mislead. In the event such proceedings are not forthwith taken and completed within six months from the service of said notice, the attorney-general is authorized and directed to bring an action to procure a judgment vacating or annulling the act of incorporation of such corporation, or any act renewing the corporation, or continuing its corporate existence or annulling the existence of such corporation. No city or town shall raise or appropriate any money toward arming or equipping, uniforming or in any other way supporting, sustaining or providing drill rooms or armories for any such body of men; but associations wholly composed of soldiers honorably discharged from the service of the United States, or members of the order of Sons of Veterans, may parade in public with firearms on Decoration day, or on May first, known as Dewey day, or upon the reception of any regiment or companies of soldiers returning from such service, and for the purpose of escort duty at the burial of deceased soldiers, and students in educational institutions where military science is a prescribed part of the course of instruction, and cadet organizations composed of youths under eighteen years of age, under responsible instructors, may, with the consent of the governor, drill and parade with firearms in public under the superintendence of their instructors. This section shall not be construed to prevent any organization authorized to do so by law from parading with firearms, nor to prevent parades by the national guard or naval militia of any other state. The independent military organizations mentioned in this section not regularly organized as organizations of the national guard or naval militia, are hereby made subject to the orders of the governor in case of emergency or necessity, to aid the national guard or naval militia in quelling invasion, insurrection, riot or breach of the peace, provided the officers and members of such organization shall, when so called upon, first sign and execute and deliver through their commanding officer to the officer to whom it is ordered to report, a form of enlistment in form to be prescribed by the governor in regulations or orders for a term not less than thirty days nor more than ninety days at one time; and if the service of such organization shall not be required for the full term of their enlistment they shall be discharged by the order of the governor. All members of such independent organizations when called into service of the state, as herein provided for, shall be equipped and paid by

L. 1916, ch. 331.

Mortgage foreclosure.

Code Civ. Pro. § 1627.

the state, and shall be protected in the discharge of their duties, and in obeying the orders of the governor, as though a part of the national guard or naval militia of the state. Any person violating any provision of this section shall be deemed guilty of a misdemeanor. (*Amended by L. 1911, ch. 210, L. 1912, ch. 69, L. 1913, ch. 41, and L. 1916, ch. 564, in effect May 15, 1916.*)

MILITARY TRAINING.

Physical training in schools; Education L., §§ 695-697. Generally; Military L., §§ 26-29-d.

MILK.

Evaporated or condensed; Agricultural L., § 37.

Registry of cans; Agricultural L., § 36-a.

Fat tests; Agricultural L., § 35-a.

MONROE COUNTY.

Commissioner of elections; Election L., §§ 210-223.

MONUMENTS.

L. 1916, ch. 637.—An act to provide for the construction of a monument to commemorate the services of the one hundred and fourth regiment of infantry, New York volunteers, upon the battlefield of Antietam and making an appropriation therefor. (*In effect May 20, 1916.*)

Section 1. The New York monuments commission for the battlefields of Gettysburg, Chattanooga and Antietam, is hereby authorized and directed to construct upon the battlefield of Antietam a monument to commemorate the services of the one hundred and fourth regiment of infantry, New York volunteers, upon a site upon such battlefield to be selected by the commission. The sum of fifteen hundred dollars (\$1,500), or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, for the construction of such monument, to be expended under the direction of such commission and payable by the state treasurer on the warrant and audit of the comptroller upon the certificate of the chairman of such commission.

MORTGAGE.

Who bound by judgment to foreclose, see Judgment.

Code of Civil Procedure.

§ 1627. Parties defendant.—*Subd. 2 amended by L. 1916, ch. 331, in effect Sept. 1, 1916, as follows:*

2. The people of the state of New York may be made a party defendant to an action for the foreclosure of a mortgage on real property, where the people of the state of New York have an interest in or a lien on the said

real property subsequent to the lien of the mortgage sought to be foreclosed in said action, in the same manner as a private person. In such a case the summons must be served upon the attorney-general, who must appear in behalf of the people, but where the people of the state of New York are made a party defendant, as herein provided, the complaint shall set forth, in addition to the other matters required to be set forth by the code of civil procedure detailed facts showing the particular nature of the interest in or the lien on the said real property of the people of the state of New York, and the reason for making the people a party defendant. Upon failure to state such facts, the complaint shall be dismissed as to the people of the state of New York. The commissioners of the land office, whenever they deem it for the best interests of the state may order the treasurer, on the warrant of the comptroller, to pay off and cancel any mortgage, or encumbrance or any amount due thereon existing on any lands belonging to the state, or in which the state has an interest, to perfect in the state a title to any such lands or to protect the state's interests therein. And the plaintiff shall not be entitled to costs in an action wherein the people of the state are made a party defendant, unless the commissioners of the land office, after a full presentation of the facts to them, shall have determined before the action of foreclosure is brought against the state that the interests of the state did not warrant their making an order for the payment or cancellation of said mortgage, or encumbrance, or any amount due thereon, or unless the commissioners of the land office shall have failed to make such determination within three months after such full presentation of facts shall have been made to them by verified statement in writing, and duly filed with the secretary of said commissioners at his office in the city of Albany, nor unless a certified copy of the referee's or sheriff's report of sale filed in the action shall have first been duly served upon the attorney-general; nor in any event shall an additional allowance under sections three thousand two hundred fifty-two or three thousand two hundred fifty-three of this act be made to the plaintiff, in an action wherein the people of the state of New York is made a party defendant.

MOSQUITOS.

Extermination commissions in certain counties; **Public Health L., §§ 400-418.**

MOTOR CYCLE.

Registration and license; **Highway L., §§ 300-310.**

MOTOR VEHICLES.

Registration fees for auto trucks and omnibuses; **Highway L., § 282.** Disposition of registration fees; **Highway L., § 291.**

L. 1916, chs. 541, 542.Nassau county.

MOVING PICTURES.

License to operate; General City L., § 18. Miniature apparatus exempted; General Business L., § 214. Employment of children in connection with manufacture of films; Penal L., § 485.

MUNICIPAL COURT OF NEW YORK.

Amendments of law, see New York.

NASSAU COUNTY.

Election of coroners; County L., § 180. Salaries of county judge and surrogate; County L., § 232. Special deputy liquor tax comr.; Liquor Tax L., § 6. Cemeteries in; Membership Corporations L., § 85.

L. 1916, ch. 542.—An act to legalize and confirm the acts and proceedings of the board of elections and board of supervisors of the county of Nassau, in relation to the publication of election notices in the year nineteen hundred and eleven, and authorizing payment of claim presented therefor. (*In effect May 15, 1916.*)

L. 1916, ch. 541.—An act relating to the preparation of assessment-rolls for the townships and tax districts therein in the county of Nassau, and the collection of taxes in such towns and tax districts, and to repeal certain local acts and parts of acts relating to assessments and taxation in such county. (*In effect May 15, 1916.*)

NAVIGATION LAW.

(L. 1909, ch. 42.)

§ 5. Duties and powers of inspectors.

When ferries not subject to inspection or license.—All ferries operated by cable, rope or gasoline boat entirely separated from the scow or carrying vehicle, except by such attachment by means of rope, chains or other devices as may be necessary to force the scow or vessel across the river, are not subject to the provisions of the Navigation Law as to inspection or license. Atty. Genl. Opin., 5 State Dep. Rep. 492 (1915).

NEGOTIABLE INSTRUMENTS LAW.

(L. 1909, ch. 43.)

§ 2. Definitions.

Delivery.—See *Grannis v. Stevens* (1916), 216 N. Y. 583.

§ 35. Delivery; when affectual; when presumed.

Act and intention are the essential constituents of a delivery which makes the instrument operative according to its terms. The final question is, did the obligor do such act in reference to it as evidences an intention to give it, in the possession or control of the obligee, effect and operation according to its terms. Whenever there has been a delivery of the instrument for the purpose of giving it such effect, it becomes a present and completed contract and parol evidence cannot be given to contradict, vary or modify its terms. *Grannis v. Stevens* (1916), 216 N. Y. 583, affg. 157 App. Div. 561, 142 N.Y. Supp. 835.

§ 42. Forged signature; effect of.

Forged indorsement of payee; deposit of checks to holder's account; indorsement of forged instrument; right of depositary to reimburse drawee.—Where a person having possession of checks forged the names of the payees and then indorsed them himself and delivered them to the plaintiff, who deposited them to his own account in a bank, the plaintiff obtained no title to the instruments and is not entitled to recover the deposit from the bank which, on discovering the forgery, canceled the credit and reimbursed the bank upon which the checks had been drawn. The plaintiff by indorsing the checks for deposit guaranteed the validity of the forged indorsement. The bank in which the checks were deposited to the plaintiff's account was under no obligation to await a suit by the bank upon which the checks were drawn before reimbursing it. *Geering v. Metropolitan Bank* (1915), 170 App. Div. 751, 156 N. Y. Supp. 582.

§ 51. What constitutes consideration.

An old debt and an extension of time for the payment thereof constitute "value." In re *Progressive Wall Paper Corp.* (1915), 224 Fed. 143.

§ 52. What constitutes holder for value.

Holder for value.—*Brown v. Brown* (1915), 91 Misc. 220, 154 N. Y. Supp. 1093.

§ 54. Effect of want of consideration.

Defense of lack of consideration.—Whether or no an instrument in the form of a promissory note is non-negotiable by reason of the fact that the promise to pay is not unconditional but is contingent upon an election by the holder, the defense of lack of consideration is available where the original payee is still the holder. Where such instrument contains the words "for value received" and is pleaded *in hæc verba*, it is equivalent to an allegation of consideration; but this may be controverted by the maker. *Du Bosque v. Munroe* (1915), 168 App. Div. 821, 154 N. Y. Supp. 462.

The provision that "absence or failure of consideration is a matter of defense as against any person not a holder in due course" expresses a principle of sub-

stantive law and not a rule of pleading. *Mechanics and Metals National Bank v. Terminal* (1915), 93 Misc. 1, 156 N. Y. Supp. 433.

§ 55. Liability of accommodating party.

Liability of accommodation indorser.—Where the defendant indorsed a note for the accommodation of the maker on the condition that it was not to be used or negotiated unless another indorser were obtained, but it was transferred by the maker in violation of the condition to a person who was a holder in due course, having no knowledge of the condition on which the indorsement was made, the defendant is liable. *Baruch v. Buckley* (1915), 167 App. Div. 113, 151 N. Y. Supp. 853.

See generally, *Grannis v. Stevens* (1916), 216 N. Y. 583, 588.

§ 62. Indorsement must be of entire instrument.

Indorsee of a part of a promissory note cannot maintain an action at law thereon. *Barkley v. Muller* (1915), 168 App. Div. 110, 153 N. Y. Supp. 923.

§ 91. What constitutes a holder in due course.

This section confirms and continues the rule of the common law that a payee of commercial paper upon complying with the requirements of said section may claim the protection accorded any other *bona fide* holder for value. *Brown v. Brown* (1915), 91 Misc. 220, 154 N. Y. Supp. 1098.

Holder in due course.—*Goldberg v. Berg* (1916), 93 Misc. 498, 157 N. Y. Supp. 209.

§ 95. What constitutes notice of defect.

Action against maker upon note signed in blank and subsequently filled in by payee, without authority; sufficiency of evidence to establish bad faith of holder of such note.—In an action upon a promissory note made by the defendant it appeared that the defendant, a woman, was a client of the payee and had signed, at his request, the note in question in blank on his representation that he was to use it, with three others, signed in the same manner, to pay a balance due on a certain transaction evidenced by notes then due at the bank. The payee filled in the note, without authority from the defendant, in his own handwriting, and indorsed and delivered it to the plaintiff who had loaned him money upon his representing that he was in trouble with a woman client who threatened to begin disbarment proceedings against him unless he returned certain moneys to her. The plaintiff testified that the note and two insurance policies were inclosed in a letter to him from the payee, but the letter itself contained no reference to the note and referred only to the insurance policies, and was dated, as was the assignment of the insurance policies, two days before the loan was made. When the note became due, it was not presented for payment, no efforts were made to collect against the payee, and the plaintiff did not make a demand upon the defendant until nearly three years thereafter. It appeared from the uncontradicted testimony of the plaintiff that he did not inquire of the payee who the maker of the note was, though he noticed that the body of it was in the payee's handwriting. It was *held*, that while the above details combined were sufficient to raise an issue of fact as to the plaintiff's good faith in the transaction, they were not enough to justify a verdict for the defendant, since something more than mere suspicion was required to establish bad faith on the part of the holder of the note. *Cole v. Harrison* (1915), 167 App. Div. 336, 153 N. Y. Supp. 200.

Bad faith; evidence creating suspicion insufficient.—In an action upon a check it appeared that one G., the payee, had stolen money from his employers in Austria and deposited it with a firm in Europe, whose correspondents in New York in good faith sent a check therefor to G. at the latter place; that G. indorsed the check and delivered it to N. under circumstances sufficient to show bad faith; and that N. presented the check to the plaintiffs who cashed it. It was *held*,

on all the evidence, that the plaintiffs were *bona fide* holders for value, and entitled to recover from the drawers of the check. Evidence creating or sufficient to create a suspicion in the minds of the plaintiffs concerning the transaction was not sufficient; there must be actual proof of bad faith on the part of a purchaser of a negotiable instrument. *Oliner v. Goldenberg* (1915), 168 App. Div. 874, 152 N. Y. Supp. 235.

§ 96. Rights of holder in due course.

Defense that check was stolen from maker.—In an action on a check complete except as to delivery, brought by a *bona fide* holder in due course for value, it is not a defense that such check was stolen from the maker before delivery. *Schaefer v. Marsh* (1915), 90 Misc. 307, 153 N. Y. Supp. 96.

§ 98. Who deemed holder in due course.

Presumption as to holder in due course.—Where a note appears to have been transferred by the payee for value so as to entitle the transferee upon delivery to be regarded as a holder in due course, the signature of the payee as indorser is sufficient indorsement for the transfer and may constitute him a *bona fide* holder for value, and his subsequent assignment thereof to plaintiff operates as a transfer of his rights. Where it appears that said note was negotiated in violation of an agreement under which it was given, the presumption that plaintiff was a holder for value no longer applied, and he was bound to show affirmatively his good faith. *Steinberger v. Hittelman* (1915), 93 Misc. 105, 156 N. Y. Supp. 320.

See generally *Warnock Uniform Co. v. Garifalos* (1915), 170 App. Div. 674, 156 N. Y. Supp. 637.

§ 111. Liability of drawer.

A bill of exchange upon acceptance becomes, in effect, a promissory note, the acceptor standing in the place of the maker and becoming primarily liable and the maker standing in the place of a first indorser. *United States Rail Co. v. Wiener* (1915), 169 App. Div. 561, 155 N. Y. Supp. 425.

§ 114. Liability of irregular endorser.

Liability of payees and indorsers of a bill of exchange upon its dishonor.—The drawer of a bill of exchange upon its dishonor may not recover from the payees who have indorsed it before maturity, in the absence of a special or collateral agreement. Hence, a complaint which alleges that plaintiff drew a bill of exchange in favor of defendants on a corporation which accepted it; that thereafter defendants indorsed it and the same before maturity was delivered to plaintiff for value, and that said plaintiff is still the owner and holder thereof; that at maturity the bill was not paid and was protested, due notice being given to defendants, is insufficient, where there is no allegation of any special or collateral agreement on the part of defendants, the payees and indorsers of the bill. *United States Rail Co. v. Wiener* (1915), 169 App. Div. 561, 155 N. Y. Supp. 425.

§ 115. Warranty.

The assignee of a promissory note who obtains his title from the payee without indorsement holds it subject to all equities and defenses existing between the original parties even though he pays full consideration and was without notice of the existence of such equities and defenses. In an action by the assignee on the note, the defense of want of consideration is good as against plaintiff, and the exclusion of evidence tending to that effect is error, and a judgment entered on the direction of a verdict in favor of plaintiff will be reversed. *Steinberger v. Hittelman* (1915), 93 Misc. 105, 156 N. Y. Supp. 320.

§ 116. Liability of general endorser.

Liability of indorser; set-off.—While an indorser of a promissory note is said to be secondarily liable, the holder of a note may sue both the maker and the indorser, or either, and an indorser sued upon his contract of indorsement is absolutely liable thereon. Where the indorser is himself sued he may plead as a set-off the indebtedness of the holder to him and the fact that the holder is insolvent does not deprive the indorser of his right of self-defense. In the presence of mutual demands existing between the holder of the note and the indorser, the debt due is the balance that remains after one has been set off against the other. The party claiming that the debt due is more than the balance, which is the *prima facie* amount of the debt, has resting upon him the burden of proving the fact upon which his claim rests. *Curtis v. Davidson* (1915), 215 N. Y. 395.

§ 118. Order in which endorsers are liable.

Liability of prior indorser; when presumption arising from order in which names of indorser appear overcome so as to raise question of fact as to intention.—The president, secretary and treasurer, and vice-president of a corporation, owning all of its stock, in order to procure the discount of a note executed by it, and to protect their financial interests, indorsed it, individually, in the order named, following their official indorsements. The note was then discounted by a bank and the proceeds used in the business of the corporation. The corporation being unable to pay the note in full, the vice-president, who was the last indorser, paid the same and brought an action against the corporation and prior indorsers. There was no evidence of any *express* agreement between the parties with respect to the indorsements. It was *held*, that, under such circumstances, the presumption arising from the order in which the names of the indorsers appeared was sufficiently overcome to raise a question of fact as to whether it was not the intention of the parties to become jointly liable as sureties for the corporation, and not liable to one another according to the order of their respective indorsements, and that it was error to refuse the request of the secretary and treasurer to present the question to the jury. *Strasburger v. Strasburger & Co.* (1915), 167 App. Div. 198, 152 N. Y. Supp. 757.

§ 131. Presentment where instrument is not payable on demand.

The president and treasurer of a corporation, who indorses in his individual capacity the note of his corporation, is an endorser entitled to presentment of the note for payment and notice of nonpayment. *Grandison v. Robertson* (1916), 231 Fed. 785, 796.

§ 133. Place of presentment.

Place of presentment.—*Columbia-Knickerbocker Trust Co. v. Miller* (1915), 215 N. Y. 191, 197.

Presentment through Clearing House.—*Columbia-Knickerbocker Trust Co. v. Miller* (1915), 215 N. Y. 191, 197.

§ 139. When presentment not required to charge the drawer.

Failure to make demand on a note at the time and place of payment agreed upon does not exonerate the debtor, whose readiness to pay at the specified time and place is merely equivalent to a tender. *Baldwin's Bank v. Smith* (1915), 215 N. Y. 76, 79, revg. 155 App. Div. 881, 139 N. Y. Supp. 1115.

§ 179. Where notice must be sent.

Notice mailed to wrong address.—At the maturity of a promissory note, made and dated in the city of New York within the borough of Manhattan, the indorser both

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Decisions.

resided and had his place of business within said borough but added no address to his signature, and notice of protest was mailed to him at an address which had not represented his residence for more than six months. In an action against him, as indorser, he alleged that he never received notice of protest and contended that as matter of law, on the face of the notary's certificate, he had been relieved from liability by the notary's act in undertaking to specify a street and number as well as a post-office address and then failing to ascertain and use the correct street and number of defendant's residence on the day of protest. The evidence was to the effect that the notary endeavored to ascertain defendant's address from the makers of the note, tried to reach a former cashier who he thought knew some of the parties and enlisted the note teller and another employee in finding the address; they spent three-quarters of an hour or more in the search and finally used the information afforded by the last issue of the standard Manhattan directory. *Held*, sufficient to show that the notary had made reasonable effort and adequate inquiry as to defendant's street address and had acted upon the best information obtained from such inquiry, and that a motion to set aside the verdict in favor of plaintiff should be denied. *McGrath v. Francolini* (1915), 92 Misc. 359, 156 N. Y. Supp. 981.

Payment of a note in whole or in part by one secondarily liable thereon does not discharge the obligation of the maker. *Assets Realization Co. v. Mercantile National Bank* (1915), 167 App. Div. 757, 153 N. Y. Supp. 156.

§ 322. Within what time a check must be presented.

Failure to present a check within a reasonable time does not exonerate the drawer, unless there has been a loss. *Baldwin's Bank v. Smith* (1915), 215 N. Y. 76, 80.

Delay of payee in presenting check for payment; failure of bank on which check is drawn; when payee must bear loss.—Where the defendant, in payment for merchandise purchased, gave his check drawn upon a local bank to the seller's agent, payable to the order of the seller, which had its place of business in another town, and the seller did not put the check in its own bank for collection until five days thereafter, so that it did not reach the bank upon which it was drawn until nine days after its inception, there was such a delay on the part of the payee that it should bear the loss caused by the fact that the bank ceased doing business and made an assignment for the benefit of creditors on the day before the check was presented for payment, if during the period of delay the maker had sufficient funds to pay the check had it been duly presented. *Sulsberger & Sons Co. v. Cramer* (1915), 170 App. Div. 114, 155 N. Y. Supp. 775.

§ 323. Certification of check; effect of.

Certification of raised check; recovery of moneys paid by mistake.—A bank by certifying a check in the usual form does no more than affirm the genuineness of the signature of the drawee and that he has funds on deposit to meet it, and that the funds will not be permitted to be withdrawn to the prejudice of the holder of the check. But the certification does not warrant the genuineness of the body of the check. Hence, where the amount of a check originally genuine was raised by the holder, a bank which certified the check and has paid the amount to another bank in which the holder deposited it can recover back the payment as moneys paid by mistake, there being nothing to take the case out of the general rule. *National Reserve Bank v. Corn Exchange Bank* (1916), 171 App. Div. 195, 157 N. Y. Supp. 316.

§ 324. Effect where holder of check procures it to be certified.

When drawer of check not discharged.—The rule that a bank having accepted a check becomes the principal debtor is but a statement in other phraseology of this

section. Where, however, a bank through the mistake of its teller certifies a check upon which the payment has previously been stopped, and the check has not left the hands of the payee who shows no change of circumstances and no harm or injury to himself, and where the drawer is not discharged by the certification for the reason that he has himself created the situation by stopping payment before the mistaken certification is made, the case is taken out of the rule of liability of a bank upon its certification, and no recovery against the bank, upon suit by such payee, will lie. *Baldinger & Kupferman Mfg. Co. v. Manufacturers-Citizens Trust Co.* (1915), 93 Misc. 94, 156 N. Y. Supp. 445.

§ 325. When check operates as an assignment.

A letter of advice sent by a foreign depositor with a check, directing the bank to protect the same, does not effect an "assignment." *Eastman Kodak Co. v. National Park Bank* (1916), 231 Fed. 320.

§ 326. Recovery of forged check.

Payment by savings bank on forged drafts; rule as to liability to depositor.—The liability of a savings bank for payments made upon forged drafts differs from that of ordinary banks of deposit which are absolutely liable for payment on forged checks no matter how skillful the forgery may be. A savings bank is not liable for payments made upon a forged draft unless negligence can be imputed to it, that is to say, unless the discrepancy between the signatures is so marked and plain that an ordinarily competent clerk exercising reasonable care should detect the forgery. *Noah v. Bank for Savings* (1916), 171 App. Div. 191, 157 N. Y. Supp. 324.

Delivery of check to agent for delivery to indorsee; wrongful delivery to a third person on forged indorsement; constructive delivery to indorsee.—Where the maker of a check required the payee named therein to indorse the instrument as payable to the order of the plaintiff and delivered the check thus indorsed to the payee with instructions to deliver the same to the plaintiff, there was a constructive, although no actual, delivery to the plaintiff so as to vest him with legal title. Hence, although the instrument was never delivered to the plaintiff but came into the hands of a third person upon a forged indorsement of the plaintiff's name and such person deposited the check to his own account in the bank upon which it was drawn, the bank must pay the amount to the plaintiff. This, because the bank could acquire no title to the check, nor right to collect it, through the forgery of the plaintiff's indorsement and having collected the proceeds may not retain them as against the plaintiff. It is immaterial whether the maker of the check made the payee his own agent or the agent of the plaintiff for the purposes of delivering the check to the latter. *Wolfen v. Security Bank* (1915), 170 App. Div. 519, 156 N. Y. Supp. 474.

NEW PRISONS.

Commission reorganized; see *Prisons*.

NEW YORK CITY.

Price of gas; see L. 1916, chs. 604, 612.

Municipal Court Code,

(L. 1915, ch. 279.)

§ 5. Districts and number of judges therein.—*Subd. c. repealed and new subd. c. added by L. 1916, ch. 479, in effect May 9, 1916, as follows:*

c. In the borough of Brooklyn there shall be seven districts, as follows:

1. The first district embraces the territory bounded by and within the following: The center line of Flushing avenue from Washington avenue to Navy street; the westerly side of the United States navy yard from Flushing avenue to the point where it touches the waters of Wallabout channel; a line drawn from the said point to and along the center line of the southwesterly branch of the Wallabout channel from the said point to the westerly boundary of said borough; the westerly boundary of the said borough from its intersection with the said center line of Wallabout channel to a point where it would be intersected by the center line of Gowanus bay, if continued thereto; the said center line of Gowanus bay and the center line of Gowanus canal from the said point of its said intersection with said westerly boundary to the center line of Hamilton avenue; the center line of Hamilton avenue from the said point of its intersection with the center line of Gowanus canal to Prospect avenue; the center line of Prospect avenue from Hamilton avenue to Fifth avenue; the center line of Fifth avenue from Prospect avenue to Flatbush avenue; the center line of Flatbush avenue from Fifth avenue to Fulton street; the center line of Fulton street from Flatbush avenue to Bridge street; the center line of Bridge street from Fulton street to Myrtle avenue; the center line of Myrtle avenue from Bridge street to Hudson avenue; the center line of Hudson avenue from Myrtle avenue to Johnson street; the center line of Johnson street from Hudson avenue to Navy street; the center line of Navy street from Johnson street to Myrtle avenue; the center line of Myrtle avenue from Navy street to Raymond street; the center line of Raymond street from Myrtle avenue to Bolivar street; the center line of Bolivar street from Raymond street to Saint Edwards street; the center line of Saint Edwards street from Bolivar street to Willoughby street; the center line of Willoughby street from Saint Edwards street to Raymond street; the center line of Raymond street from Willoughby street to Lafayette street; the center line of Lafayette street from Raymond street to Navy street; the center line of Navy street from Lafayette street to DeKalb avenue; the center line of DeKalb avenue from Navy street to Washington park; the center line of Washington park from DeKalb avenue to

Myrtle avenue; the center line of Myrtle avenue from Washington park to Washington avenue; the center line of Washington avenue from Myrtle avenue to Flushing avenue; in which district there shall be one justice.

2. The second district embraces the territory bounded and within the following: The center line of Flushing avenue from Washington avenue to Broadway; the center lines of Broadway and Stuyvesant avenue from Flushing avenue to Fulton street; the center line of Fulton street from Stuyvesant avenue to Schenectady avenue; the center line of Schenectady avenue from Fulton street to Atlantic avenue; the center line of Atlantic avenue from Schenectady avenue to Grand avenue; the center line of Grand avenue from Atlantic avenue to Lefferts place; the center line of Lefferts place from Grand avenue to Saint James place; the center line of Saint James place from Lefferts place to Atlantic avenue; the center line of Atlantic avenue from Saint James place to Washington avenue; the center line of Washington avenue from Atlantic avenue to Flushing avenue; in which district there shall be two justices.

3. The third district embraces the territory bounded by and within the following: the center line of Flushing avenue from Navy street to Broadway; the center line of Broadway from Flushing avenue to Willoughby avenue; the center line of Willoughby avenue from Broadway to Bushwick avenue; the center line of Bushwick avenue from Willoughby avenue to Suydam street; the center line of Suydam street from Bushwick avenue to Central avenue; the center line of Central avenue from Suydam street to Starr street; the center line of Starr street from Central avenue to the boundary of said borough; the easterly, northerly and westerly boundaries of the said borough from Starr street to the point of intersection of said westerly boundary with the center line of the southwesterly branch of the Wallabout channel, if continued thereto; the said center line of the southwesterly branch of the Wallabout channel to and along a line drawn to the point where the westerly side of the United States navy yard touches the waters of said Wallabout channel; the said westerly side of the United States navy yard to Flushing avenue; in which district there shall be two justices.

4. The fourth district embraces the territory bounded by and within the following: the center line of Fulton street from Broadway to Sackman street; the center line of Sackman street from Fulton street to Atlantic avenue; the center line of Atlantic avenue from Sackman street to Eastern parkway; the center line of Eastern parkway from Atlantic avenue to Howard avenue; the center line of Howard avenue from Eastern parkway to East New York avenue; the center line of East New York avenue from Howard avenue to Montgomery street; the center line of Montgomery street from East New York avenue to Franklin avenue; the center line of Franklin avenue from Montgomery street to Atlantic avenue; the center line of Atlantic avenue from Franklin avenue to Schenectady avenue; the center line of Schenectady avenue from Atlantic avenue

to Fulton street; the center line of Fulton street from Schenectady avenue to Stuyvesant avenue; the center line of Stuyvesant avenue from Fulton street to Broadway; the center line of Broadway from Stuyvesant avenue to Willoughby avenue; the center line of Willoughby avenue from Broadway to Bushwick avenue; the center line of Bushwick avenue from Willoughby avenue to Suydam street; the center line of Suydam street from Bushwick avenue to Central avenue; the center line of Central avenue from Suydam street to Starr street; the center line of Starr street from Central avenue to the northeasterly boundary of said borough; the said boundary of said borough from Starr street to Stockholm street; the center line of Stockholm street from the said boundary to Bushwick avenue; the center line of Bushwick avenue from Stockholm street to Kossuth place; the center line of Kossuth place from Bushwick avenue to Broadway; the center line of Broadway from Kossuth place to Fulton street; in which district there shall be one justice.

5. The fifth district embraces the territory bounded by and within the following: the center line of Hamilton avenue from the center line of Gowanus canal to Prospect avenue; the center line of Prospect avenue from Hamilton avenue to Terrace place; the center line of Terrace place from Prospect avenue to Gravesend avenue; the center line of Gravesend avenue from Terrace place to Fort Hamilton parkway; the center line of Fort Hamilton parkway from Gravesend avenue to Thirty-seventh street; the center line of Thirty-seventh street from Fort Hamilton parkway to Tenth avenue; the center line of Tenth avenue from Thirty-seventh street to Thirty-ninth street; the center line of Thirty-ninth street from Tenth avenue to Twelfth avenue; the center line of Twelfth avenue from Thirty-ninth street to Fortieth street; the center line of Fortieth street from Twelfth avenue to Thirteenth avenue; the center line of Thirteenth avenue from Fortieth street to Forty-first street; the center line of Forty-first street from Thirteenth avenue to Fourteenth avenue; the center line of Fourteenth avenue from Forty-first street to Forty-second street; the center line of Forty-second street from Fourteenth avenue to Fifteenth avenue; the center line of Fifteenth avenue from Forty-second street to Forty-third street; the center line of Forty-third street from Fifteenth avenue to Seventeenth avenue; the center line of Seventeenth avenue from Forty-third street to West street; the center line of West street from Seventeenth avenue to Eighteenth avenue; the center line of Eighteenth avenue from West street to Gravesend avenue; the center line of Gravesend avenue from Eighteenth avenue to Avenue J; the center line of Avenue J from Gravesend avenue to Ocean parkway; the center line of Ocean parkway from Avenue J to Foster avenue; the center line of Foster avenue from Ocean parkway to East Seventeenth street; the center line of East Seventeenth street from Foster avenue to Avenue R; the center line of Avenue R from East Seventeenth street to Nostrand avenue; the center line of Nostrand avenue from Avenue R to Avenue U; the center line of

Avenue U from Nostrand avenue to Gerritsen avenue; the center line of Gerritsen avenue from Avenue U to Avenue U; the center line of Avenue U from Gerritsen avenue to the center line of Gerritsen basin, or millpond; the center line of Gerritsen basin or millpond from Avenue U to Sheepshead bay to the line dividing the borough of Brooklyn from the borough of Queens; the southerly and westerly boundaries of the said borough of Brooklyn from the said dividing line between the boroughs of Brooklyn and Queens to a point on the southwesterly boundary of the borough of Brooklyn where it would be intersected by the center line of Gowanus bay, or canal, if continued thereto; the said center line of Gowanus bay, or canal, from the said westerly boundary of the borough of Brooklyn to the center line of Hamilton avenue; in which borough there shall be one justice.

6. The sixth district embraces the territory bounded by and within the following: The center line of Foster avenue from Ocean parkway to East Thirty-first street; the center line of East Thirty-first street from Foster avenue to Farragut road; the center line of Farragut road from East Thirty-first street to East Fifty-eighth street; the center line of East Fifty-eighth street from Farragut road to Church avenue; the center line of Church avenue from East Fifty-eighth street to Remsen avenue; the center line of Remsen avenue from Church avenue to Linden avenue; the center line of Linden avenue from Remsen avenue to East Ninety-eighth street; the center line of East Ninety-eighth street from Linden avenue to Tapscott street; the center line of Tapscott street from East Ninety-eighth street to East New York avenue; the center line of East New York avenue from Tapscott street to Montgomery street; the center line of Montgomery street from East New York avenue to Franklin avenue; the center line of Franklin avenue from Montgomery street to Atlantic avenue; the center line of Atlantic avenue from Franklin avenue to Grand avenue; the center line of Grand avenue from Atlantic avenue to Lefferts place; the center line of Lefferts place from Grand avenue to Saint James place; the center line of Saint James place from Lefferts place to Atlantic avenue; the center line of Atlantic avenue from Saint James place to Washington avenue; the center line of Washington avenue from Atlantic avenue to Myrtle avenue; the center line of Myrtle avenue from Washington avenue to Washington park; the center line of Washington park from Myrtle avenue to Dekalb avenue; the center line of Dekalb avenue from Washington park to Navy street; the center line of Navy street from Dekalb avenue to Lafayette street; the center line of Lafayette street from Navy street to Raymond street; the center line of Raymond street from Lafayette street to Willoughby street; the center line of Willoughby street from Raymond street to Saint Edwards street; the center line of Saint Edwards street from Willoughby street to Bolivar street; the center line of Bolivar street from Saint Edwards street to Raymond street; the center line of Raymond street from Bolivar street to Myrtle

avenue; the center line of Myrtle avenue from Raymond street to Navy street; the center line of Navy street from Myrtle avenue to Johnson street; the center line of Johnson street from Navy street to Hudson avenue; the center line of Hudson avenue from Johnson street to Myrtle avenue; the center line of Myrtle avenue from Hudson avenue to Bridge street; the center line of Bridge street from Myrtle avenue to Fulton street; the center line of Fulton street from Bridge street to Flatbush avenue; the center line of Flatbush avenue from Fulton street to Fifth avenue; the center line of Fifth avenue from Flatbush avenue to Prospect avenue; the center line of Prospect avenue from Fifth avenue to Terrace place; the center line of Terrace place from Prospect avenue to Gravesend avenue; the center line of Gravesend avenue from Terrace place to Fort Hamilton parkway; the center line of Fort Hamilton parkway from Gravesend avenue to Thirty-seventh street; the center line of Thirty-seventh street from Fort Hamilton avenue to Tenth avenue; the center line of Tenth avenue from Thirty-seventh street to Thirty-ninth street; the center line of Thirty-ninth street from Tenth avenue to Twelfth avenue; the center line of Twelfth avenue from Thirty-ninth street to Fortieth street; the center line of Fortieth street from Twelfth avenue to Thirteenth avenue; the center line of Thirteenth avenue from Fortieth street to Forty-first street; the center line of Forty-first street from Thirteenth avenue to Fourteenth avenue; the center line of Fourteenth avenue from Forty-first street to Forty-second street; the center line of Forty-second street from Fourteenth avenue to Fifteenth avenue; the center line of Fifteenth avenue from Forty-second street to Forty-third street; the center line of Forty-third street from Fifteenth avenue to Seventeenth avenue; the center line of Seventeenth avenue from Forty-third street to West street; the center line of West street from Seventeenth avenue to Eighteenth avenue; the center line of Eighteenth avenue from West street to Gravesend avenue; the center line of Gravesend avenue from Eighteenth avenue to Avenue J; the center line of Avenue J from Gravesend avenue to Ocean parkway; the center line of Ocean parkway from Avenue J to Foster avenue; in which district there shall be two justices.

7. The seventh district embraces the territory bounded by and within the following: The center line of Fulton street from Broadway to Sackman street; the center line of Sackman street from Fulton street to Atlantic avenue; the center line of Atlantic avenue from Sackman street to Eastern parkway; the center line of Eastern parkway from Atlantic avenue to Howard avenue; the center line of Howard avenue from Eastern parkway to East New York avenue; the center line of East New York avenue from Howard avenue to Tapscott street; the center line of Tapscott street from East New York avenue to East Ninety-eighth street; the center line of East Ninety-eighth street from Tapscott street to Linden avenue; the center line of Linden avenue from East Ninety-eighth street to Remsen avenue; the center line of Remsen avenue from Linden avenue to Church

avenue; the center line of Church avenue from Remsen avenue to East Fifty-eighth street; the center line of East Fifty-eighth street from Church avenue to Farragut road; the center line of Farragut road from East Fifty-eighth street to East Thirty-first street; the center line of East Thirty-first street from Farragut road to Foster avenue; the center line of Foster avenue from East Thirty-first street to East Seventeenth street; the center line of East Seventeenth street from Foster avenue to Avenue R; the center line of Avenue R from East Seventeenth street to Nostrand avenue; the center line of Nostrand avenue from Avenue R to Avenue U; the center line of Avenue U from Nostrand avenue to Gerritsen avenue; the center line of Gerritsen avenue from Avenue U to Avenue U; the center line of Avenue U from Gerritsen avenue to Gerritsen's basin, or millpond; the center line of Gerritsen's basin, or millpond, to Sheepshead bay, to the line dividing the borough of Brooklyn from the borough of Queens in Rockaway inlet; the said line dividing the borough of Brooklyn from the borough of Queens from the said intersection in said Rockaway inlet to Stockholm street; the center line of Stockholm street from the said dividing line to Bushwick avenue; the center line of Bushwick avenue from Stockholm street to Kossuth place; the center line of Kossuth place from Bushwick avenue to Broadway; the center line of Broadway from Kossuth place to Fulton street; in which district there shall be two justices. (*Subd. added by L. 1916, ch. 479, in effect May 9, 1916.*)

L. 1916, ch. 479, § 2. This act shall not affect any action or proceeding in the municipal courts as presently constituted, now pending, or affect any of the districts mentioned in said section c of said act before this amendment thereof, or affect in any wise the justices of the districts now existing who shall until the expiration of their respective terms be and continue as justices of said court for the districts for which they were elected, and of the districts by this act territorially changed and altered bearing the same number as that in and for which they were respectively elected.

§ 27. Joinder of parties; interpleader.—*Subd. 4 added by L. 1916, ch. 610, in effect Sept. 1, 1916, as follows:*

4. The deposition of a party to an action in this court or of a person who expects to be a party to an action about to be brought in this court may be taken at his own instance or at the instance of an adverse party, or by co-plaintiff or co-defendant at any time before or during the trial, in the same manner as such depositions are taken under the provisions of law applicable to like cases in the supreme court.

§ 118. Jury trial.—*Subd. 3 added by L. 1916, ch. 123, in effect Apr. 3, 1916, as follows:*

3. If an action is settled or discontinued before trial, all jury and jurors' fees paid by any party as provided in this act shall be returned forthwith to such party by the clerk of the court to whom such jury fee was paid.

§ 1.

Acts of notaries legalized.

L. 1916, ch. 280.

§ 142. **Return of execution and satisfaction of judgment.**—*Subds. 2 and 3 amended by L. 1916, ch. 508, in effect May 11, 1916, as follows:*

2. If no execution has been issued to a marshal and no transcript of the judgment has been filed in the office of a county clerk, the judgment may be satisfied by depositing with the clerk of the court in the district where the judgment is entered the full amount due on the judgment, with interest to the date of deposit; whereupon the clerk must mark the record of the judgment satisfied.

3. When a transcript of a judgment has been filed in the office of a county clerk and no execution has been issued to a sheriff, the judgment may be satisfied by depositing with the said county clerk the full amount due on the judgment, with interest to the date of deposit, accompanied by a certificate of the sheriff of the same county, dated on the day of deposit, that no execution upon the judgment is in his hands; whereupon the said county clerk shall cancel and discharge the docket of the judgment.

NON-RESIDENTS.

Actions against, upon demand barred by law of residence; see **Actions**.

NORMAL SCHOOLS.

Salaries of teachers for fiscal year ending July 1, 1916; see L. 1916, ch. 534.

NOTARIES PUBLIC AND COMMISSIONERS OF DEEDS.

L. 1916, ch. 280.—An act to legalize and confirm the official acts of notaries public and commissioners of deeds. (*In effect Apr. 24, 1916.*)

Section 1. The official acts of every person as notary public or commissioner of deeds within the state of New York, heretofore commissioned as such, which acts have been performed since the first day of March, nineteen hundred and fifteen, so far as such acts may be affected, impaired or questioned by reason of change of residence made after appointment, or by reason of misnomer or misspelling of name or other errors made in the appointment or commission of said notary public or commissioner of deeds, or by reason of omission or failure to take the prescribed oath of office within the time required by law, or by reason of such persons being under the age of twenty-one years, or by reason of the expiration of the term of office of such notaries public or commissioners of deeds, or by reason of failure of a notary public to file his certificate of appointment and official oath as such notary in a county other than the county in which such appointment was made and the certificate of such appointment was duly filed, where such notary public or commissioner of deeds has acted in good faith, upon payment being made by such notary public or commissioner of deeds of the legal fees for holding such office or filing such certificate, are hereby legalized and confirmed and made effectual and

L. 1916, ch. 16.

Panama-Pacific Exposition commission.

§§ 3, 5.

valid, as the official acts of a notary public or commissioner of deeds legally qualified to perform the same, as fully as if neither of the various errors, omissions, matters and conditions hereinabove enumerated has occurred or existed.

§ 2. Nothing in this act contained shall affect any action or proceeding pending at the time this act takes effect.

ONEIDA COUNTY.

Board of elections abolished; Election L., § 209-a.

Salary of county judge; County L., § 232.

Salary of stenographer of county court; Judiciary L., § 319.

ONONDAGA COUNTY.

Salary of transfer tax appraiser; Tax L., § 229.

ONTARIO COUNTY.

Salary of Surrogate; County L., § 232.

OPTIONAL CITY LAW.

Operation suspended, see Cities.

PALISADES.

Bond authorization, see Parks.

PANAMA-PACIFIC EXPOSITION.

L. 1912, ch. 541 (B. C. & G.'s Consol. Laws, Vol. 8, p. 1852).

§ 3.—The members of the commission shall receive no compensation for their services, but shall be entitled to the actual necessary expenses incurred while in discharge of duties imposed upon them by the commission. Such commission may appoint a secretary and fix his compensation for all services to be performed in carrying out the provisions of this act, and the commission may also provide for such other clerical assistance and office facilities in this state or in San Francisco as it deems necessary, but no salaries or expenses shall be incurred after June thirtieth, nineteen hundred and sixteen. (*Amended by L. 1916, ch. 16, in effect Mch. 1, 1916.*)

§ 5.—The sum of two hundred and fifty thousand dollars (\$250,000), or so much thereof as may be necessary for the accomplishment of the above specified purposes, is hereby appropriated out of any moneys in the treasury not otherwise appropriated, for the purposes of this act. Such money shall be paid by the treasurer on the warrant of the comptroller issued upon a requisition signed by the chairman and vice-chairman of the commission,

§ 5.	Expenses of commission.	L. 1916, ch.16.
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accompanied by an estimate of the expenses for the payment of which the money so drawn is to be applied. On or before June thirtieth, nineteen hundred and sixteen, such commission shall make a verified report to the comptroller of the disbursements made by it, and shall return to the state treasury the unexpended balance of money drawn in pursuance of this act. No indebtedness or obligation shall be incurred under this act in excess of the appropriation herein made. (*Amended by L. 1916, ch. 16, in effect Mch. 1, 1916.*)

PARK DISTRICTS.

Authority to establish, in certain towns; Town L., §§ 349-349-1.

PARKS.

L. 1916, ch. 569.—An act making provision for issuing bonds to the amount of not to exceed ten million dollars for the acquisition of lands for state park purposes, and providing for a submission of the same to the people to be voted upon at the general election to be held in the year nineteen hundred and sixteen. (*In effect May 15, 1916.*)

Section 1. There shall be issued, in the manner and at the times herein-after recited, bonds of the state in an amount not to exceed ten million dollars, which bonds shall be sold by the state and the proceeds thereof paid into the state treasury, and so much thereof as may be necessary expended for the acquisition of lands for state park purposes as hereinafter provided. Such bonds when issued shall be exempt from taxation.

§ 2. **Sale; interest; tax to pay; sinking fund.**—The comptroller is hereby directed to cause to be prepared the bonds of this state to an amount not to exceed ten million dollars, said bonds to bear interest at the rate of not to exceed four and one-half per centum per annum, which interest shall be payable semi-annually in the city of New York. Said bonds shall be issued for a term of fifty years from their respective dates of issue, and shall be sold for not less than par. The comptroller is hereby charged with the duty of selling said bonds to the highest bidder after advertising for a period of twenty consecutive days, Sundays excepted, in at least two daily newspapers printed in the city of New York and one in the city of Albany. Advertisements shall contain a provision to the effect that the comptroller, in his discretion, may reject any or all bids made in pursuance of said advertisements, and, in the event of such rejection, the comptroller is authorized to readvertise for bids in the form and manner above described as many times as in his judgment may be necessary to effect a satisfactory sale. Said bonds shall be sold in such lots and at such times as may be required for the purpose of making partial or final payments in accordance with the provisions of this act. There is hereby imposed a direct annual tax at the rate of eight thousand eight hundred and sixty-five dollars and fifty cents together with interest on the debt for each one million dollars of bonds issued, to provide for a sinking fund for the redemption of the said bonds, together with the interest thereon. The tax imposed, as herein provided, shall be assessed, levied and collected in the manner prescribed by law, and shall be paid by the several county treasurers into the treasury of the state. The proceeds of such tax shall be invested by the comptroller in securities in which he is authorized by law to invest the trust and sinking funds of the state, and together with the interest arising therefrom, any premium received on the sale of said bonds, and interest accruing on deposits of

money received from the sale of said bonds or from miscellaneous sources shall constitute a sinking fund which is hereby created. Said fund shall be used solely for the purpose of paying the principal and interest of bonds issued in accordance with the provisions of this act.

§ 3. The proceeds of two million five hundred thousand dollars of such bonds, after appropriation or appropriations therefrom by the legislature, shall be applicable to the acquisition of lands for the extension of the Palisades Interstate park. Such moneys shall be expended and lands acquired by the commissioners of the Palisades Interstate park under the provisions of chapter one hundred and seventy of the laws of nineteen hundred, as amended. Such moneys shall be available for payment of the purchase price where lands are acquired by contract or for payments of judgments and awards in case of purchase by condemnation.

§ 4. The proceeds of seven million five hundred thousand dollars of such bonds, after appropriation or appropriations therefrom by the legislature, shall be applicable to the acquisition of lands for state park purposes within the forest preserve counties which lands, if now owned by the state under existing law, would be part of the forest preserve. Such moneys shall be expended and lands acquired under the direction of the conservation commission by and with the advice and consent of the commissioners of the land office. Such lands may be acquired in such manner as the legislature shall provide, which may be either by purchase, by condemnation or by entry and appropriation with submission to the court of claims or supreme court for the determination and award of damages for such entry and appropriation, or by one or more of such methods as the legislature may provide; but no proceeding shall be instituted by condemnation or by entry and appropriation unless provision be made by law for filing the written consent thereto of the commissioners of the land office with the county clerk of each county in which lands proposed to be taken are situated. Subject to the filing of such consent, any such proceeding shall be conducted by and in the name of the conservation commission; provided, however, that if any other board, officer or commission shall succeed by law to the general powers of the conservation commission in relation to the care of the forest preserve, such latter board, officer or commission shall have and exercise all of the powers and duties conferred by any provision of this section upon the conservation commission. The moneys realized from such bonds, after appropriation by the legislature, shall be available for payment of the purchase price, where lands are acquired by contract, and for the payment of judgments and awards in case of proceedings by condemnation or by entry and appropriation. No moneys shall be paid out under this section for the acquisition of lands by contract except upon the warrant and audit of the comptroller, after submission to him of vouchers therefor approved by the conservation commission and by the commis-

L 1916, ch. 330.

Partition action; state a party.

Code Civ. Pro. § 1594.

sioners of the land office, accompanied with the certificate of the attorney-general approving the title to and conveyance of the lands purchased.

§ 5.—The term “lands” as used in this act includes the improvements thereon, if any. All lands acquired under this act shall be for the use of all the people.

§ 6. **Submission of law to people.**—This law shall not take effect until it shall at a general election have been submitted to the people and have received a majority of all the votes cast for and against it at such election; and the same shall be submitted to the people of this state at the general election to be held in November, nineteen hundred and sixteen. The ballots to be furnished for the use of the voters upon the submission of this law shall be in the form prescribed by the election law and the proposition or question to be submitted shall be printed thereon in substantially the following form, namely: “Shall chapter (here insert the number of the chapter) of the laws of nineteen hundred and sixteen, entitled ‘An act making provision for issuing bonds to the amount of not to exceed ten million dollars for the acquisition of lands for state park purposes, and providing for a submission of the same to the people to be voted upon at the general election to be held in the year nineteen hundred and sixteen,’ be approved?”

PARTITION.

Who bound by judgment; see Judgment.

Code of Civil Procedure.

§ 1594. **When state is interested.**—The people of the state may be made a party defendant to an action for the partition of real property, in the same manner as a private person. In such a case the summons must be served upon the attorney-general who must appear in behalf of the people, but where the people of the state of New York are made a party defendant, as herein provided, the complaint shall set forth, in addition to the other matters required to be set forth by the code of civil procedure detailed facts showing the nature and extent of the interest in or lien on the said real property of the people of the state of New York and the reason for making the people a party. Upon failure to state such facts, the complaint shall be dismissed, as to the people of the state of New York. The commissioners of the land office, whenever they deem it for the best interests of the state, may order the treasurer on the warrant of the comptroller to pay off and cancel any mortgage, tax, or other encumbrance, or any amount due thereon, or to acquire any undivided interest, adverse to the state, existing on any lands belonging to the state, or in which the state has an interest, to perfect in the state a title to any such lands or to protect the state's interest therein, and the plaintiff shall not be entitled to costs in an action wherein the people of the state are made a party defendant, unless

Code Civ. Pro. § 1594.

Partition action; state a party.

L. 1916, ch. 330.

the commissioners of the land office, after a full presentation of the facts to them shall have determined before the action of partition is brought against the state that the interests of the state did not warrant their making an order for the payment or cancellation of said mortgage, lien or encumbrance, or any amount due thereon, or for the acquisition of any outstanding undivided interest adverse to the state, or unless the commissioners of the land office shall have failed to make such determination within three months after such full presentation of facts shall have been made to them by a verified statement in writing, and filed with the secretary of said commissioners at his office in the city of Albany, nor unless a certified copy of the commissioners' report of partition, and of the referee's or sheriff's report of sale, in case of a sale, filed in the action shall have first been duly served upon the attorney-general nor in any event shall an additional allowance under sections thirty-two hundred and fifty-two or thirty-two hundred and fifty-three of this act be made to the plaintiff, in an action wherein the people of the state of New York are made a party defendant. (*Amended by L. 1916, ch. 330, in effect Sept. 1, 1916.*)

L. 1916, ch. 309.

Selling disabled horses.

§§ 2, 43, 70, 188a, 190.

PENAL LAW.

(L. 1909, ch. 88.)

§ 2. Definitions.

Under an indictment charging a person as a direct common-law principal it may be shown that he either committed the act himself or that he acted in conjunction with those who did commit it. *People v. Eichner* (1915), 168 App. Div. 200, 154 N. Y. Supp. 44.

Principals.—See *People v. Galbo* (1916), 218 N. Y. 283, 289.

§ 43. Penalty for acts for which no punishment is expressly prescribed.

Driving on the left side of a highway is not a misdemeanor within the meaning of this section which involves a wrongful purpose. Driving on the left side of a road subjects the offender only to a civil penalty, to be recovered by the party injured, in addition to the damages caused by such violation. Hence, a driver of a farm wagon cannot be convicted under this section for a misdemeanor for driving on the wrong side of the road in the evening without lights, thereby causing injury to a motor car and the driver thereof. *People v. Martinitis* (1915), 168 App. Div. 446, 153 N. Y. Supp. 791.

§ 70. Abduction.

Age of female.—This is based upon the theory that a girl under eighteen years of age is incapable of consenting to the act. *Boyles v. Blankenhorn* (1915), 168 App. Div. 388, 153 N. Y. Supp. 466.

§ 120. Advertising to procure divorces.

Application.—It is not necessary to a violation of said statute that the advertisement contain the particular words condemned by the section; it is sufficient that words are used which convey the same meaning. *Matter of Neuman* (1915), 169 App. Div. 638, 155 N. Y. Supp. 428.

Attorney at law suspended from practice for advertising that he made matrimonial actions a specialty, contrary to this section. *Matter of Neuman* (1915), 169 App. Div. 638, 155 N. Y. Supp. 428.

§ 188-a. **Selling disabled horses.**—It shall be unlawful for any person holding an auctioneer's license knowingly to receive or offer for sale or to sell at public auction, other than at a sheriff's or judicial sale under a court order, any horse which by reason of debility, disease or lameness, or for any other cause, could not be worked in this state without violating the law against cruelty to animals. Any person violating any provision of this section shall upon conviction be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment. (*Added by L. 1916, ch 309, in effect Apr. 25, 1916.*)

§ 190. Poisoning or attempting to poison animals.

Conspiracy for poisoning horses of competitors in business; when question whether a witness is an accomplice is not a question of law but one of fact for a

§§ 193, 280.

Corporations not to practice law.

L. 1916, chs. 173, 254.

jury.—Defendants were indicted and convicted for the crime of poisoning a horse. They were members of an association of ice cream manufacturers which, it is charged, employed men to poison the horses of independent dealers who refused to join the association. The trial court instructed the jury that a certain witness called by the prosecution was not an accomplice, thereby permitting the jury to find a verdict upon his uncorroborated testimony. The evidence permits the inference that there was a conspiracy to poison the horses of the competitors of the association; that its managers were authorized to use its funds for that purpose; that the witness promoted the conspiracy by joining the association and by paying the poisoners whom it employed; that the crime charged was committed under the direction of the managers of the association, was in aid of the common purpose and that the witness knowing this paid his quota of the cost. It was held, that the instruction of the trial court was erroneous and that it should have been left to the jury to determine whether the witness was an accomplice. Another witness called by the prosecution had poisoned other horses under the orders of one of the defendants and had been paid by the association, but he did not poison the horse in question and had no part in the poisoning. It was held, that he was not an accomplice within the meaning of the statute. *People v. Swersky* (1916), 216 N. Y. 471, affg. 168 App. Div. 941, and revg. 168 App. Div. 950.

§ 193. **Transporting animals for more than twenty-eight consecutive hours without unloading.**—A railway corporation, or an owner, agent, consignee, or person in charge of any horses, sheep, cattle, or swine, in the course of, or for transportation, who confines, or causes or suffers the same to be confined, in cars for a longer period than twenty-eight consecutive hours, without unloading for rest, water and feeding, during five consecutive hours, unless prevented by storm or inevitable accident, is guilty of a misdemeanor. In estimating such confinement, the time during which the animals have been confined without rest, on connecting roads from which they are received, must be computed. If the owner, agent, consignee, or other person in charge of any such animals refuses or neglects upon demand to pay for the care or feed of the animals while so unloaded or rested, the railway company, or other carriers thereof, may charge the expense thereof to the owner or consignee and shall have a lien thereon for such expense. (*Amended by L. 1916, ch. 173, in effect Sept. 1, 1916.*)

§ 280. **Corporations and voluntary associations not to practice law.**—It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney-at-law for any person other than itself in any court in this state or before any judicial body, or to make it a business to practice as an attorney-at-law, for any person other than itself, in any of said courts or to hold itself out to the public as being entitled to practice law, or render or furnish legal services or advice, or to furnish attorneys or counsels or to render legal services of any kind in actions or proceedings of any nature or in any other way or manner, or in any other manner to assume to be entitled to practice law or to assume, use or advertise the title of lawyer or attorney, attorney-at-law, or equivalent terms in any language in such manner as to convey the impression that it is entitled to practice

law, or to furnish legal advice, services or counsel, or to advertise that either alone or together with or by or through any person whether a duly and regularly admitted attorney-at-law, or not, it has, owns, conducts or maintains a law office or an office for the practice of law, or for furnishing legal advice, services or counsel. It shall be unlawful further for any corporation or voluntary association to solicit itself or by or through its officers, agents or employees any claim or demand for the purpose of bringing an action thereon or of representing as attorney-at-law, or for furnishing legal advice, services or counsel to a person sued or about to be sued in any action or proceeding or against whom an action or proceeding has been or is about to be brought, or who may be affected by any action or proceeding which has been or may be instituted in any court or before any judicial body, or for the purpose of so representing any person in the pursuit of any civil remedy. Any corporation or voluntary association violating the provisions of this section shall be liable to a fine of not more than five thousand dollars and every officer, trustee, director, agent or employee of such corporation or voluntary association who directly or indirectly engages in any of the acts herein prohibited or assists such corporation or voluntary association to do such prohibited acts is guilty of a misdemeanor. The fact that such officer, trustee, director, agent or employee shall be a duly and regularly admitted attorney-at-law, shall not be held to permit or allow any such corporation or voluntary association to do the acts prohibited herein nor shall such fact be a defense upon the trial of any of the persons mentioned herein for a violation of the provisions of this section. This section shall not apply to any corporation or voluntary association lawfully engaged in a business authorized by the provisions of any existing statute, nor to a corporation or voluntary association lawfully engaged in the examination and insuring of titles to real property, nor shall it prohibit a corporation or voluntary association from employing an attorney or attorneys in and about its own immediate affairs or in any litigation to which it is or may be a party, nor shall it apply to organizations organized for benevolent or charitable purposes, or for the purpose of assisting persons without means in the pursuit of any civil remedy, whose existence, organization or incorporation may be approved by the appellate division of the supreme court of the department in which the principal office of said corporation or voluntary association may be located.

Nothing herein contained shall be construed to prevent a corporation from furnishing to any person, lawfully engaged in the practice of the law, such information or such clerical services in and about his professional work as, except for the provisions of this section, may be lawful, provided that at all times the lawyer receiving such information or such services shall maintain full professional and direct responsibility to his clients for the information and services so received. But no corporation shall be permitted to render any services which cannot lawfully be rendered by a person not admitted to practice law in this state nor to solicit directly or indirectly

§§ 404, 480, 485.

Unlawful employment of children.

L. 1916, ch. 278.

professional employment for a lawyer. (*Added by L. 1909, ch. 483, and amended by L. 1911, ch. 317 and L. 1916, ch. 254, in effect Apr. 18, 1916.*)

Practice of law by foreign corporation; attorneys; assisting foreign corporation to practice law in this State in violation of statute.—It is unlawful for a corporation, whether domestic or foreign, to practice law in this State, and any member of our bar who assists a corporation in violating the law in this respect is himself guilty of wrongdoing. A foreign corporation which in this State prepares papers requisite for the incorporation of companies under the statute of its State, and furnishes incidental advice in connection therewith, practices law within the meaning of this section. So, also, attorneys who conduct an office in this State for such a corporation, and give advice and services in the name and on behalf thereof, and assist in the acts done by it, are guilty of professional misconduct, and should be censured, although they met the charges against them with the utmost fairness and frankness, and discontinued their relations with the corporation. *Matter of Pace* (1915), 170 App. Div. 818, 156 N. Y. Supp. 641.

§ 404. Burglary in third degree.

When breaking out of a building, after committing a crime therein, constitutes burglary.—Opening of a latched door constitutes a breaking sufficient to uphold a conviction for burglary. This section provides that a person who being in a building commits a crime therein and breaks out of the same is guilty of burglary in the third degree. Defendant, with others, entered a barn through an open doorway for the purpose of killing a heifer therein and stealing the meat. After they entered one of them closed the door of the entrance through which they had come and fastened it with a hook or strap so that it remained closed sufficiently to prevent egress unless the fastening was removed. After the heifer had been killed the defendant and his companions unfastened the door and left the barn, taking the meat with them. It was held, that defendant was guilty of burglary. *People v. Toland* (1916), 217 N. Y. 187, revg. 165 App. Div. 795.

§ 480. Abandonment of children.

Putative father of illegitimate child not a "parent."—The word "parent," as used in this section does not include the putative father of an illegitimate child which has not been under his custody or control, and hence he cannot be convicted under said statute for the crime of abandonment. *People v. Fitzgerald* (1915), 167 App. Div. 85, 152 N. Y. Supp. 641.

§ 485. Unlawful employment of children.—A person who employs or causes to be employed, or who exhibits, uses or has in custody, or trains for the purpose of exhibition, use or employment of any child actually or apparently under the age of sixteen years, or who, having the care, custody or control of such a child as parent, relative, guardian, employer, or otherwise, sells, lets out, gives away, so trains, or in any way procures or consents to the employment, or to such training, or use, or exhibition, of such child; or who neglects or refuses to restrain such child from such training, or from engaging or acting, either,

1. As a rope or wire walker, gymnast, wrestler, contortionist, rider or acrobat, or upon any bicycle or similar mechanical vehicle or contrivance; or

2. In begging or receiving or soliciting alms in any manner or under

L. 1916, ch. 278.

Unlawful employment of children.

§§ 485, 486.

any pretense, or in any mendicant occupation; or in gathering or picking rags, or collecting cigar stumps, bones or refuse from markets; or in peddling; or

3. In singing; or dancing; or playing upon a musical instrument; or in a theatrical exhibition; or in posing or acting, or as a subject for use, in or for, or in connection with, the making of a motion picture film; or in any wandering occupation; or

4. In any illegal, indecent, or immoral exhibition or practice; or in the exhibition of any such child when insane, idiotic, or when presenting the appearance of any deformity or unnatural physical formation or development; or

5. In any practice or exhibition or place dangerous or injurious to the life, limb, health or morals of the child, is guilty of a misdemeanor. But this section does not apply to the employment of any child as a singer or musician in a church, school or academy; or in teaching or learning the science or practice of music; or as a musician in any concert or in a theatrical exhibition or in posing or acting, or as a subject for use, in or for, or in connection with, the making of a motion picture film with the written consent of the mayor of the city, or the president of the board of trustees of the village where such concert or exhibition takes place. Such consent shall not be given unless forty-eight hours' previous notice of the application shall have been served in writing upon the society mentioned in section four hundred and ninety-one of this chapter, if there be one within the county, and a hearing had thereon if requested and shall be revocable at the will of the authority giving it. It shall specify the name of the child, its age, the names and residences of its parents or guardians, the nature, time, duration and number of performances permitted, together with the place and character of the exhibition; and where any child is to be employed in the making of a motion picture film it shall provide that the child is to be employed only in the manner described and set forth in the statement in writing submitted with the application, as hereinafter provided. Any person applying for such consent for the use or employment of any such child or children in any place in the state, in posing or acting for or as a subject for use in or in connection with the making of a motion picture film shall submit with such application a true and accurate statement in writing setting forth and describing in detail the entire part to be taken and each and every act and thing to be done and performed, by such child in the making of such film to the local official having authority to issue such permits or of any such society having jurisdiction in such place. But no such consent shall be deemed to authorize any violation of the first, second, fourth or fifth subdivision of this section. (*Amended by L. 1916, ch. 278, in effect Apr. 24, 1916.*)

§ 486. Prohibited acts; destitute children.

The expense for the care of children committed to a juvenile asylum under this

§§ 580, 774, 854, 856, 883.

Decisions.

section, because they did not have "proper guardianship" and also because they were "disorderly or ungovernable," and also for the care of children committed in violation of section 1298 of the Penal Law, after conviction for petit larceny, is a county charge. *People ex rel. N. Y. Juvenile Asylum v. Board of Supervisors* (1915), 168 App. Div. 863, 153 N. Y. Supp. 1076.

Effect of commitment on rights of parents.—Where a mother, a widow, has been deprived of the custody of her children and they have been committed to a charitable institution upon a judicial determination that the mother is a dissolute person and has neglected them in violation of this section, she is not entitled to notice of adoption proceedings. *Matter of Antonopulos* (1916), 171 App. Div. 659, 157 N. Y. Supp. 587.

§ 580. Definition and punishment of conspiracy.

The withdrawal by connivance of a man from an insane asylum to which he had been committed, tends to obstruct the due administration of the law. *Drew v. Thaw* (1914), 235 U. S. 432.

Conspiracy to defraud State; improper construction of State road; evidence not justifying conviction.—Appeal from a judgment convicting the defendants, a corporation and its officers and agents, of the crime of conspiracy as defined in subdivision 4 of this section. The defendant corporation had a contract with the State for road building and it was charged that its officers and employees, together with an employee of the State Engineering Department, conspired to defraud the State by not constructing the road according to specifications, etc. Evidence examined, and *held*, insufficient to sustain the conviction of certain of the defendants. In order to establish a violation of said statute there must be a corrupt agreement between the defendants, and this may be established by circumstantial evidence. *People v. Suffolk Contracting Co.* (1916), 171 App. Div. 645, 157 N. Y. Supp. 523.

§ 774. Political assessments.

Receiving political contributions.—See *People ex rel. Johnson v. Connolly* (1915), 168 App. Div. 919, 152 N. Y. Supp. 495.

§ 854. Extortion committed under color of official right.

Oppression of chief of police.—An injunction will not be granted to restrain the arrest of plaintiff, the proprietor of a moving picture show, for opening it on Sunday contrary to the conditions of a license granted to him by the mayor of a city. If plaintiff is oppressed or injured by any unlawful act of defendant, the chief of police, he may invoke section 854 of the Penal Law, or bring an action against him for damages. *Klinger v. Ryan* (1915), 91 Misc. 71, 153 N. Y. Supp. 937.

§ 856. Blackmail.

Libel; justification of charge of blackmail.—In an action for libel it is error for the court to rule that the defense of justification of a charge of blackmail requires proof of blackmail as defined in this section. It cannot be said, as a matter of law, that an allegation that the plaintiff was a blackmailer charged him with having committed the *crime* of blackmail. The word "blackmail" has a broader meaning and has been construed as synonymous with extortion. *Guenther v. Ridgway Co.* (1915), 170 App. Div. 725, 156 N. Y. Supp. 534.

§ 883. Uttering writing signed with wrongdoer's name.

See *People's Trust Co. v. Smith* (1915), 215 N. Y. 488, 492.

L. 1916, ch. 320.

Enticing inmates from institution.

§§ 889, 993, 994, 1250a.

§ 889. Forgery in third degree.

Alteration of books by employee.—A bookkeeper who, without profit or gain or the expectation thereof on her part, by direction and approval of a member of the firm by whom she is employed and a proposed assignee of the firm's property, alters a book of the firm so that the proposed assignee will not appear thereon as a creditor, is not guilty of forgery within the meaning of subdivision 1 of section 889 or within the meaning of subdivision 4 of the second portion of said section. *People v. Fish* (1915), 169 App. Div. 22, 154 N. Y. Supp. 504.

§ 993. Securities for money lost at gaming void.

A judgment of a court of this State based on dealing in futures is not invalid under this section and must under the full faith and credit clause of the United States Constitution, be presumed valid in another State and not subject to collateral attack. *Carpenter v. Beal-M'Donnell & Co.* (1915), 222 Fed. 453.

§ 994. Property staked may be recovered.

See *Botts v. Mercantile Bank* (1915), 170 App. Div. 879, 883, 156 N. Y. Supp. 700.

§ 1120. Irresponsibility of idiot or lunatic.

The word "wrong" in the statutory definition of insanity is not limited to legal as opposed to moral wrong. *People v. Schmidt* (1915), 216 N. Y. 324.

§ 1141. Obscene prints and articles.

Indecent moving picture.—The public exhibition of an indecent and obscene moving picture film known as "The Dance of the Seven Veils," is punishable under this section by imprisonment for not less than ten days nor more than one year, or a fine of not less than fifty dollars nor more than a thousand dollars, or both fine and imprisonment. Such imprisonment may, under section 2182 of the Penal Law, be inflicted by confinement either in a county jail or in a penitentiary or state prison. The offense is a crime of the grade of a felony under section 2 of the Penal Law, and a police court has no jurisdiction of the offense. *People v. Hayman* (1916), 94 Misc. 624.

§ 1146. Keeping disorderly houses.

Allowing premises to become disorderly.—*Matter of Farley* (1915), 170 App. Div. 164, 155 N. Y. Supp. 869.

See generally *Farley v. Wurz* (1916), 217 N. Y. 105, 107.

§ 1250. Kidnapping defined.

Taking children from custody of father.—One who assists a mother in taking her two children, both under sixteen years of age, from the custody of their father, there being no adjudication awarding him their exclusive custody, is not guilty of "kidnapping" as defined by section 1250 of the Penal Law. *People v. Workman* (1916), 94 Misc. 374, 157 N. Y. Supp. 594.

§ 1250-a. Enticing inmates from public institutions.—Any person who shall entice away or assist to escape an inmate of any public charitable institution or custodial asylum or institution for the feeble-minded, idiots, epileptics or insane, or a reformatory or reform school, or knowing such person to be such inmate promises to provide a home for or to pay for the service of or to marry such inmate, or who shall keep or harbor any such inmate for the purposes above mentioned without the consent or approval of the board of managers of the institution in which such inmate was kept,

§§ 1270, 1271, 1290.

Hours of labor.

L. 1916, ch. 151.

shall be guilty of a misdemeanor. (*Added by L. 1916, ch. 320, in effect Apr. 26, 1916.*)

§ 1270. Refusal to admit inspector to mines.

Liability of employer for disobedience of rules promulgated by commissioner of labor pursuant to section 120 of the Labor Law. *Mantsewich v. U. S. Gypsum Co.* (1916), 217 N. Y. 593.

§ 1271. Hours of labor to be required.—Any person or corporation:

1. Who, contracting with the state or a municipal corporation, shall require more than eight hours work for a day's labor; or,

2. Who shall require more than ten hours labor, including one-half hour for dinner, to be performed within twelve consecutive hours, by the employees of a street surface and elevated railway owned or operated by corporations whose main line of travel or routes lie principally within the corporate limits of cities of more than one hundred thousand inhabitants; or,

3. Who shall require the employees of a corporation owning or operating a brick yard to work contrary to the requirements of section five of the labor law; or,

4. Who shall require or permit any employee engaged in or connected with the movement of any train of a corporation operating a line of railroad of thirty miles in length, or over, in whole or in part within this state, to remain on duty more than sixteen consecutive hours; or to require or permit any such employee who has been on duty sixteen consecutive hours to go on duty without having had at least ten hours off duty; or to require or permit any such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period, to continue on duty or to go on duty without having had at least eight hours off duty within such twenty-four hour period; except when by casualty occurring after such employee has started on his trip, or by unknown casualty occurring before he started on his trip, and except when by accident or unexpected delay of trains scheduled to make connection with the train on which such employee is serving, he is prevented from reaching his terminal;

Is guilty of a misdemeanor, and on conviction therefor shall be punished by a fine of not less than five hundred nor more than one thousand dollars for each offense. (*Amended by L. 1916, ch. 151, in effect Apr. 7, 1916.*)

An attempt by state officers to waive the provisions of section 3 of the Labor Law, will render them liable for criminal prosecution for malfeasance in office. *Atty. Genl. Opin.*, 6 State Dep. Rep. 494 (1916).

Violation of Penal Law in failing to post list of employees and file copy thereof, in compliance with Labor Law section 8a, subdivision 3.—See *People v. Eberhart* (1916), 171 App. Div. 458, 157 N. Y. Supp. 133.

§ 1290. Larceny defined.

Larceny.—As to when appropriation of goods for examination and selection before purchase constitutes the crime of grand larceny, see *People v. Scharf* (1916), 217 N. Y. 204, revg. 168 App. Div. 494.

L. 1916, ch. 367.

Slot machines; stolen property.

§§ 1293c, 1308.

§ 1293-c. Obtaining property or the use of property by fraudulently operating a slot machine, coin-box telephone or other coin receptacle.—Any person who shall operate or cause to be operated or who shall attempt to operate or attempt to cause to be operated any automatic vending machine, slot machine, coin-box telephone or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, by means of a slug or of any false, counterfeited, mutilated or sweated coin, or by any means, method, trick or device whatsoever not lawfully authorized by the owner, lessee or licensee of such machine, coin-box telephone or receptacle; or who shall take, obtain or receive from or in connection with any automatic vending machine, slot machine, coin-box telephone or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, any goods, wares, merchandise, gas, electric current, article of value, or the use or enjoyment of any telephone or telegraph facilities or service, or of any musical instrument, phonograph or other property, without depositing in and surrendering to such machine, coin-box telephone or receptacle lawful coin to the amount required therefor by the owner, lessee or licensee of such machine, coin-box telephone or receptacle, shall be guilty of a misdemeanor and punishable by imprisonment for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both fine and imprisonment. (*Added by L. 1916, ch 367, in effect Sept. 1, 1916.*)

§ 1298. Petit larceny defined.

Liability for support of children committed to a juvenile asylum for violation this section and under section 486 is a county charge. People ex rel. New York Juvenile Asylum v. Board of Education (1915), 168 App. Div. 863, 153 N. Y. Supp. 1076.

§ 1306. Claim of title a ground of defense.

Application.—Defense that property was taken openly and in good faith. See People v. Hudson Valley Construction Co. (1916), 217 N. Y. 172, affg. 165 App. Div. 626.

When claim of title not a defence. People v. Gordon (1915), 168 App. Div. 479, 153 N. Y. Supp. 1069.

§ 1308. Buying or receiving stolen or wrongfully acquired property.—A person, who buys or receives any stolen property, or any property which has been wrongfully appropriated in such a manner as to constitute larceny according to this article, knowing the same to have been stolen or so dealt with, or who corruptly, for any money, property, reward, or promise or agreement for the same, conceals, withholds, or aids in concealing or withholding any property, knowing the same to have been stolen, or appropriated wrongfully in such a manner as to constitute larceny under the provisions of this article, if such misappropriation has been committed within the state, whether such property were so stolen or misappropriated within

§§ 1433, 1450.

Unlawful marriage ceremony.

L. 1916, ch. 368.

or without the state, or who being a dealer in or collector of junk, metals or second hand materials, or the agents, employee or representative of such dealer or collector, buys or receives any wire, cable, copper, lead, solder, iron or brass used by or belonging to a railroad, telephone, telegraph, gas or electric light company, or any metal in the form of * ingots, ingot bars, wire bars, cakes, slabs, billets or pigs, without ascertaining by diligent inquiry, that the person selling or delivering the same has a legal right to do so, is guilty of criminally receiving such property in the first degree, if such property be of the value of more than fifty dollars, and is punishable by imprisonment in a state prison for not more than five years, or in a county jail for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment, and is guilty of criminally receiving such property in the second degree, if such property be of the value of fifty dollars or under, and is punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment. (*Amended by L. 1916, ch. 366, in effect May 1, 1916.*)

§ 1433. Injury to property.

Application.—This section applies only to damages to "real or personal property of another," that is, to one holding the legal title. Hence, an assignee of a contract for the purchase of a dwelling is not entitled to treble damages for injury to the property pending conveyance. *Potter v. Bierwirth* (1916), 171 App. Div. 175, 157 N. Y. Supp. 25.

§ 1434. **Placing injurious substances on roads.**—Whoever willfully shall throw, drop or place, or shall cause or procure to be thrown, dropped or placed, in or upon any cycle path, avenue, street, sidewalk, alley, road, highway or public way or place, any glass, tacks, nails, pieces of metal, briar, thorn or other substance which might injure any animal or puncture any tire used on a vehicle, or which might wound, disable or injure any person using such way, shall be guilty of a misdemeanor, and on conviction be fined not less than five nor more than fifty dollars. (*Amended by L. 1916, ch. 321, in effect Sept. 1, 1916.*)

§ 1450. **Solemnizing unlawful marriages and unlawful solemnizing of marriages.**—A minister or magistrate who solemnize* a marriage when either of the parties is known to him to be under the age of legal consent, or to be an idiot or insane person, or a marriage to which within his knowledge a legal impediment exists, or any person not authorized by the laws of this state to perform marriage ceremonies who shall solemnize or presume to solemnize, with intent to deceive, any marriage between any parties is guilty of a misdemeanor. Until a marriage has been dissolved or annulled by a proper tribunal or court of competent jurisdiction, any person who shall assume to grant a divorce, in writing, purporting to divorce husband and wife and permitting them or either of them to lawfully marry again,

* So in original.

L. 1916, ch. 482.

Public nuisance; selling cocaine.

§§ 1451, 1530, 1746.

shall be guilty of a misdemeanor punishable by fine for the first offense not exceeding five hundred dollars, and for the second offense one thousand dollars, or imprisonment not exceeding one year, or both such fine and imprisonment. (*Amended by L. 1916, ch. 368, in effect Sept. 1, 1916.*)

§ 1451. **Unlawful procurement of marriage license.**—A person who, having a husband or wife living, takes out a license to marry another person, is guilty of a misdemeanor. The exceptions in section three hundred and forty-one of this chapter are applicable to this section. (*Added by L. 1916, ch. 482, in effect Sept. 1, 1916.*)

§ 1530. **Public nuisance defined.**

Driving on the left side of a highway is not a nuisance, and does not violate this section. *People v. Martinitis* (1915), 168 App. Div. 446, 153 N. Y. Supp. 791.

Acts which interfere with the sanctity of the Sabbath as a day of rest and religious devotion, divert the mind from divine and sacred thoughts and which interrupt the repose and religious liberty of the community constitute a public nuisance. *Hamlin v. Bender* (1915), 92 Misc. 16, 155 N. Y. Supp. 963.

Moving picture theatre.—Where a moving picture theatre to which an admission fee is charged is upon a thickly populated city street in the immediate vicinity of a large church and parish buildings connected therewith where religious services are largely attended and Sunday schools held, and the attendants upon such services would be called upon to pass and repass the theatre where signs and posters advertise the exhibition to be given within the building and where a sign board on the outer edge of the sidewalk informs passers-by that the show is going on, and the box office is but a few feet within the sidewalk, an injunction may be granted to restrain the operation of said theatre, on Sundays, as a nuisance. *Hamlin v. Bender* (1915), 92 Misc. 16, 155 N. Y. Supp. 963.

Deleterious fumes arising from manufacturing plant situated in foreign State.—A foreign corporation, conducting an industrial plant in an adjoining State cannot be indicted in this State for maintaining a public nuisance in violation of the Penal Law, because deleterious fumes, gases and odors, emitted from this plant, are carried into this State to the alleged impairment of the health of our citizens. The fact that said fumes are carried by the wind into this State does not constitute a nuisance within this State so as to render the defendant amenable to our statutes. It is the misuse of the plant itself that is the nuisance, and that can only be attacked in the State where the plant is situated. *People v. International Nickel Co.* (1915), 168 App. Div. 245, 153 N. Y. Supp. 295.

§ 1746. **Sale of cocaine or eucaïne.**

Evidence not justifying conviction; erroneous charge.—A person cannot be convicted of the crime of selling cocaine contrary to the provisions of this section on mere proof that he entered the rear room of a saloon, handed to a police officer a package which was afterwards shown to contain cocaine, and when asked what it was, replied, "Why, this is the coke," there being no proof from whom the defendant received the package, what his business was, by whom he was employed, or in what capacity or for whom he was acting in delivering the package. Moreover, it is reversible error for the court to charge in such action that the owner of the saloon was the defendant's employer, when there is no proof whatever of that fact. *People v. Davico* (1915), 170 App. Div. 337, 156 N. Y. Supp. 399.

§ 1897. **Carrying and use of dangerous weapons.**

Carrying of dangerous weapon; evidence of good character.—Where upon the prose-

§§ 1897a, 1898.

Firearm silencers.

L. 1916, ch. 137.

cution of a defendant not a citizen for the crime of carrying a dangerous weapon, it was established that he had the weapons in his room, evidence of good character is of little weight, especially where it was not directed to show the defendant's peaceful and inoffensive traits. *People v. Sansa* (1915), 169 App. Div. 145, 154 N. Y. Supp. 876.

§ 1897-a. Selling, carrying and use of firearm silencers.—A person who sells or keeps for sale, or offers, or gives or disposes of, or who shall have or carry concealed upon his person any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol, or other firearms to be silent or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol, or other firearms shall be guilty of a felony, punishable by imprisonment for not more than five years.

This section shall not apply to the regular and ordinary transportation of any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol, or other firearms to be silent or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol, or other firearms, as merchandise, nor to sheriffs, policemen, or to other duly appointed peace officers, nor to duly authorized military or civil organizations, nor when parading, nor to the members thereof when going to and from the place of meeting of their respective organizations, nor to duly authorized military or civil organizations in practice. (*Added by L. 1916, 137, in effect Sept. 1, 1916.*)

§ 1898. Possession, presumptive evidence.—The possession, by any person other than a public officer, of any of the weapons specified in section eighteen hundred and ninety-seven or eighteen hundred and ninety-seven-a of this chapter, concealed or furtively carried on the person, is presumptive evidence of carrying, or concealing, or possessing, with intent to use the same in violation of this article. (*Amended by L. 1916, ch. 137, in effect Sept. 1, 1916.*)

§ 1930. What persons are punishable criminally.

This statute gives the state jurisdiction of an offense committed partly within the state and partly within the borders of a foreign state, and in order to constitute a crime under the law of this state it is not necessary that the transaction should also constitute a crime under the law of the foreign state. *People v. Zayas* (1916), 217 N. Y. 78, revg. 168 App. Div. 949.

Property obtained in another state by false pretenses made in this state.—The indictment in question alleges that false pretenses were made in the state of New York, and that by reason thereof the complaining witness delivered money or property to the defendants in the state of Pennsylvania. The demurrers raise the question whether the fact that the false pretenses were made in New York and the money or property obtained in another state renders this count of the indictment insufficient in law. It was *held*, that the word *crime* as used in this statute should be construed solely with reference to the Penal Law of the state of New York, and that the acts alleged constitute a crime under the laws of this state without regard to the law prevailing in the state where the crime was consummated. *People v. Zayas* (1916), 217 N. Y. 78, revg. 168 App. Div. 949.

L. 1916, ch. 196.

Seduction under promise of marriage.

§§ 1982, 2010, 2175.

§ 1982. **Illiterate employees; telegraph operators.**—It shall be a misdemeanor for any person, firm or corporation engaged in the operation of a railroad within this state, whereon steam or electricity is used as a motive power, to employ in or about the operation of any engine, train or trains any engineer, assistant engineer, fireman, engine foreman, hostler, trainman or flagman who is unable to read the time tables of such railroad and ordinary handwriting in the English language or unable to speak, hear and understand the English language, or to see and understand the signals required by the book of rules governing the operations of the engines and trains on such railroad; or for any person, firm or corporation in his own behalf, or in the behalf of any other person or corporation, knowingly to employ or use a person so unable to read, speak, hear and understand the English language, or to see and understand the signals aforesaid as such engineer, assistant engineer, fireman, engine foreman, hostler, trainman or flagman; or to employ a person as a telegraph operator who is under the age of eighteen years, or who has less than one year's experience in telegraphing, to receive or transmit a telegraphic message or train order for the movement of trains; provided, however, that this section shall not apply to flagman at street or highway crossings. (*Amended by L. 1916, ch. 424, in effect Sept. 1, 1916.*)

§ 2010. **Rape defined.**

Consent.—One who has sexual intercourse with an unmarried female under the age of eighteen years is guilty of rape whether or no the woman consents, and, hence, such consent is no defense to an action brought by her to recover damages for such assault. *Boyles v. Blankenhorn* (1915), 168 App. Div. 388, 153 N. Y. 466.

§ 2143. **Labor prohibited on Sunday.**

An information alleging the performance by defendant on Sunday of acts incidental to the carrying on of his business as the proprietor of a public billiard or pool room, in waiting upon players or customers who were on said day playing billiards or pool then and there permitted by defendant to be engaged in, for which privilege and service he charged and received a money consideration, charges the misdemeanor of unlawfully performing labor on Sunday in violation of this section. *People ex rel. Briggs v. Owen* (1915), 92 Misc. 254, 155 N. Y. Supp. 1003.

§ 2145. **Public sports on Sunday.**

The conduct for profit on Sunday of motor cycle and bicycle races within an unroofed enclosure called the "Velodrome" located in a sparsely settled locality 500 feet from any public road and where there are no churches, school-houses or public buildings within one-half or three-quarters of a mile is a violation of this section, and a motion for an injunction restraining the sheriff from interfering with such exhibition will be denied. *Velodrome Co. v. Stengel* (1915), 91 Misc. 580, 155 N. Y. Supp. 575.

§ 2175. **Seduction under promise or pretense of marriage.**—A person, who under promise of marriage, or by means of a fraudulent representation to her that he is married to her, seduces and has sexual intercourse with an unmarried female of previous chaste character, is punishable by im-

§§ 2176, 2460.

Prostitution.

L. 1916, ch. 196.

prisonment for not more than five years, or by a fine of not more than one thousand dollars or both. (*Added by L. 1909, ch. 524, and amended by L. 1916, ch. 196, in effect Apr. 12, 1916.*)

§ 2176. Bar to prosecution.

Statute of limitations.—The provision that “the lapse of two years after the commission of the offense before the finding of an indictment is a bar to a prosecution” is not a special statutory limitation qualifying the right to prosecute, and of the essence of such right, and an inherent part of the statute under which the right arises, but a simple statute of limitations, and, as such, within the provision of section 143 of the Code of Criminal Procedure that “no time during which the defendant is not an inhabitant of or usually resident within the state, or usually in personal attendance upon business or employment within the state, is part of the limitation.” *People v. Buccolieri* (1914), 91 Misc. 156, 152 N. Y. Supp. 707.

§ 2460. Compulsory prostitution of women.

Construction.—Subdivision 3 of this section should be construed with the last word “or” in the 3d line omitted, and as so construed an indictment thereunder which charges that the defendant did feloniously induce and procure the complaining witness for prostitution, and did advise her to have unlawful sexual intercourse for money with men, and did feloniously induce and procure her to have unlawful sexual intercourse and relations with a man whose name is to this grand jury unknown, and whom he brought to her for that purpose, but fails to allege that the defendant induced, enticed or procured the complaining witness to enter a house of prostitution for the purpose of prostitution or other immorality, falls to charge a crime. *People v. Draper* (1915), 169 App. Div. 479, 154 N. Y. Supp. 1034.

Purpose of section.—Section 2460 of the Penal Law and the provisions of the Penal Code from which it was derived construed, and *held*, that the purpose of the statute is to protect women against all forms of “compulsory prostitution.” The statute is directed against the system, the permanent conditions, and not against individuals and voluntary associations. *People v. Draper* (1915), 169 App. Div. 479, 154 N. Y. Supp. 1034.

Intent.—It is the intent with which a woman or girl is brought into the State or is induced, enticed or procured to enter a house of prostitution which gives the gravamen of the crime. *People v. Draper* (1915), 169 App. Div. 479, 154 N. Y. Supp. 1034.

PERSONAL PROPERTY LAW.

(L. 1909, ch. 45.)

§ 11. Suspension of ownership.

Unlawful suspension of power of alienation by trust agreement. *Carrier v. Carrier* (1915), 167 App. Div. 405, 153 N. Y. Supp. 509. Trust unlawfully suspending power of alienation. *Matter of MacDowell* (1915), 170 App. Div. 245, 156 N. Y. Supp. 387.

§ 12. Gifts and bequests of personal property for charitable purposes.

Charitable trusts are no longer invalid by reason of the indefiniteness or uncertainty of the persons designated as beneficiaries. *Stewart v. Franchetti* (1915), 167 App. Div. 541, 153 N. Y. Supp. 453.

What constitutes a charitable trust.—This section sanctions the creation of charitable trusts and relieves such trusts as are religious, educational, charitable or benevolent from the operation of the statute against perpetuities. If the purpose to be attained is personal, private or selfish, it is not a charitable trust; but when the purpose to be accomplished is that of public usefulness unstained by personal, private or selfish considerations, its charitable character insures its validity. Where testatrix gave to her executor and trustee a fund to be invested and the income to be expended in hiring and maintaining a house "to be used as a home for refined, educated Protestant gentlewomen, whose means are small and whose home is made unhappy by having to live with relatives, who think them in the way," such bequest creates a charitable trust within the meaning of the statute. *Matter of MacDowell* (1916), 217 N. Y. 454, revg. 170 App. Div. 245.

Trust for benefit of schools in town.—A gift by a decedent of one-half of her residuary estate to her executors, "in trust, nevertheless, to be used and devoted by them to the establishment of a school for girls in the town of North Salem," is valid as a charitable gift for the benefit of the public under this section, where it appears that the decedent, a woman of charitable impulses, and leaving no children or descendants, had long been a resident of said town, which was inhabited by people of small means and in which the facilities for public education were meagre. *Butterworth v. Keeler* (1915), 169 App. Div. 136, 154 N. Y. Supp. 744.

When motion by Attorney-General to compel trustee to submit his plan of distribution should be denied.—A motion by the Attorney-General to compel a trustee under a will creating certain trusts for charitable and benevolent uses and purposes to submit his scheme and plan of distribution of the funds of the estate should be denied, where there is nothing in the moving papers to show that the trustee is not performing his duties properly, and there is no doubt as to the intention of the testatrix, or the duties of the trustee as her representative. Such a motion cannot be made in an action after judgment. *Buell v. Gardner* (1915), 168 App. Div. 278, 153 N. Y. Supp. 1108.

See generally *Hughes v. Stoutenburgh* (1915), 168 App. Div. 512, 521, 154 N. Y. Supp. 64.

§ 15. Personal property not alienable in certain cases.

Acquisition of remainders by life tenant; when merger does not operate to destroy trust.—Where, at the time of the death of a testatrix, the statute declared the interest of a beneficiary of a trust to receive and apply the income of personal

§§ 16, 31.

Agreements required to be in writing.

property to be inalienable (Laws of 1903, chap. 87), a beneficiary entitled to receive the income of trust property for life does not acquire absolute title to the corpus of the trust property by reason of the fact that the remaindermen conveyed their interests to him. Such conveyance of the remainder to the life tenant does not merge the two titles so as to destroy the trust, and the life tenant is only entitled to receive the income. *Dale v. Guaranty Trust Co.* (1915), 168 App. Div. 601, 153 N. Y. Supp. 1041.

§ 16. Validity of direction for accumulation of income.

Unlawful accumulation of stock dividends.—*Matter of Megrue* (1915), 170 App. Div. 653, 155 N. Y. Supp. 1059.

§ 31. Agreements required to be in writing.

Note or memorandum.—In order to satisfy the requirements of the Statute of Frauds a written note or memorandum of a contract must include all the terms of the completed contract. It is not sufficient that the note or memorandum may express the terms of a contract. It is essential that it should completely evidence the contract which the parties made. If, instead of proving the existence of that contract, it establishes that there was in fact no contract, or evidences a contract in terms and conditions different from that which the parties entered into, it fails to comply with the statute. *Poel v. Brunswick-Balke-Collender Co.* (1915), 216 N. Y. 310, revg. 159 App. Div. 365, 144 N. Y. Supp. 725.

A memorandum of an agreement to purchase goods in order to take a case out of the Statute of Frauds must contain substantially the whole agreement and all its material terms and conditions, so that one reading it can understand what the agreement is. Hence, correspondence which while admitting an agreement to purchase goods indicates throughout a disagreement between the parties as to the kind and quality of the goods, is insufficient to satisfy the statute. *Bauman v. Mendle-Lunepp Co.* (1915), 176 App. Div. 204, 155 N. Y. Supp. 1093.

Parol ante-nuptial agreement.—Although a parol ante-nuptial agreement is unenforceable while executory, the Statute of Frauds does not apply where, after the marriage, the promisor actually executed the contract by making a will pursuant to its terms. *Adams v. Swift* (1915), 169 App. Div. 802, 155 N. Y. Supp. 873.

A transfer of a mortgage in compliance with an alleged oral agreement in consideration of marriage and on the day of the marriage, is not invalid where the transferee had no intention of defrauding the creditors of the transferor. *Miller v. Sire* (1915), 224 Fed. 424.

Application; executed contract.—It is no defense to an action on a promissory note that it was given by the maker, a defendant in an action of partition, to her codefendant, to carry into effect a parol agreement, whereby the payee was not to bid at the partition sale, but was to allow the maker to bid in the premises. This, because, even though the original parol agreement were void under the Statute of Frauds, it has been fully carried out by the parties, and also because the action is brought upon the notes and not upon the oral agreement itself. *Kyner v. Bolton* (1916), 171 App. Div. 45, 156 N. Y. Supp. 881.

A promise by one person to indemnify another for becoming a guarantor for a third is not within the Statute of Frauds and need not be in writing. *O'Brien v. Donnelly* (1915), 169 App. Div. 709, 155 N. Y. Supp. 790.

It seems, that a writing in the ordinary form of a non-negotiable promissory note satisfies the requirements of the Statute of Frauds relating to a promise to indemnify one for the default of a third person. *O'Brien v. Donnelly* (1915), 169 App. Div. 709, 155 N. Y. Supp. 790.

Promise to pay debt of another, consideration.—See *Hudson Wrecking & Lumber Co. v. Aldrich* (1916), 94 Misc. 250, 157 N. Y. Supp. 1046.

Transfer of goods in bulk.

§§ 43, 44.

A mere refusal to perform a parol agreement void under the Statute of Frauds is in no sense a fraud either in law or in equity. *Baum v. Holstein* (1916), 93 Misc. 268, 157 N. Y. Supp. 966.

Appeal.—The defense of the Statute of Frauds cannot be taken for the first time upon appeal. *Kyner v. Bolton* (1916), 171 App. Div. 45, 156 N. Y. Supp. 881. See generally *Goldman v. Cohen* (1915), 167 App. Div. 666, 153 N. Y. Supp. 41.

§ 43. Factors' act.

Wrongful pledge of personal property by bailee; action by owner; erroneous charge; when pawnbroker entitled to benefit of Factors' Act; statute construed.—Where the plaintiff entrusted jewels to a person for the purpose of sale to a particular purchaser with a reservation of title, but the bailee being in possession pledged them with the defendant, a pawnbroker, it is error for the court to charge that if the bailee's agency was limited the defendant acquired no lien upon the property and that the plaintiff is entitled to recover. The defendant pawnbroker, having no knowledge of the limitation placed upon the bailee's powers and he being in full possession of the jewels and the apparent owner thereof, was entitled to the protection of the Factors' Act. Hence, notwithstanding the limitation placed upon the bailee's authority, where the defendant in good faith dealt with him in reliance upon his apparent ownership resting in possession, the defendant is not affected by the character of such possession of which he had no notice, actual or constructive. The expression "upon the faith thereof," contained in this section means upon the faith of the possession. *It seems*, that the rule might be different if the person pledging the jewels had obtained possession by a crime. *Thompson v. Goldstone* (1916), 171 App. Div. 666, 157 N. Y. Supp. 621.

§ 44. Transfer of goods in bulk.

Constitutionality of section sustained. *Apex Leasing Co. v. Litke* (1916), 93 Misc. 353, 158 N. Y. Supp. 21. This section, as amended by chapter 507 of the Laws of 1914, which in effect places an embargo upon all sales of merchandise in bulk under the guise of an expedient designed to prevent fraud in such sales, is unconstitutional. Said statute does not materially differ from chapter 528 of the Laws of 1902 which was declared unconstitutional by the decision in *Wright v. Hart*, 182 N. Y. 330 and which decision is *stare decisis*. *Klein v. Maravelas* (1916), 94 Misc. 458.

Insolvency.—The return of an execution, unsatisfied, a year after an alleged fraudulent transfer by a wife to her husband, in violation of this section, does not establish insolvency at the time of such transfer. *Wallach v. Baumryter* (1915), 170 App. Div. 618, 156 N. Y. Supp. 497.

"Creditors."—A landlord who obtains a judgment for rent under an unexpired lease is a "creditor" of the tenant within the meaning of section 44 of the Personal Property Law, and as such is entitled to maintain an action to set aside as fraudulent and void a sale in bulk of a stock of goods of a business by the tenant. *Apex Leasing Co. v. Litke* (1916), 93 Misc. 353, 158 N. Y. Supp. 21.

The remedy for a violation of the Bulk Sales Law, is not limited to judgment creditors, and any creditor of the seller, whether his claim is in judgment or not, may maintain an action under the statute. *Touris v. Karantzalis* (1915), 170 App. Div. 42, 156 N. Y. Supp. 526.

A transfer by a husband to wife is only presumptively fraudulent and void as to a creditor who has not been notified as provided by this section, and when it appears that the husband by assuming the debts of the wife and making a payment sufficient to pay the creditor, paid all that the property was worth, the presumption is removed. The husband having paid full value, the sale was not fraudulent.

§§ 60, 62, 65.

Sale of property retaken.

or void, nor did it come within the terms of the statute, making it even presumptively fraudulent. *Wallach v. Baumryter* (1915), 170 App. Div. 618, 156 N. Y. Supp. 497.

Order declaring third party receiver of goods.—In a proceeding supplementary to execution, the court is without jurisdiction to make an order declaring a person not a party to the proceeding and not sworn as a witness therein, to be a receiver for the benefit of creditors of the judgment debtor under the provisions of this section, as amended. *Kaphan v. Rogers Brothers Grocery Co.* (1915), 169 App. Div. 63, 154 N. Y. Supp. 753.

Fraud for which a debtor's property may be attached must be actual and intentional, not statutory or constructive, and a sale of goods in bulk without notice to creditors in violation of this section will not support an attachment. *Millang v. Lambros* (1915), 90 Misc. 638, 153 N. Y. Supp. 944.

§ 60. Definitions.

Application to property to be manufactured.—Article 4 of the Personal Property Law, relating to contracts for conditional sale, which was derived from article 9 of the Lien Law (Laws of 1897, chap. 418), since the amendment of the latter article by chapter 698 of the Laws of 1904, applies to property which is to be manufactured. *Breakstone v. Buffalo Foundry & Machine Co.* (1915), 167 App. Div. 62, 152 N. Y. Supp. 394.

§ 62. Conditions and reservations in contracts for the sale of goods and chattels.

Filing contract of sale of chattels affixed to realty; rights of purchaser of realty on foreclosure.—Where a conditional bill of sale of chattels affixed to real property has been filed as required by the Personal Property Law, a purchaser of the realty on foreclosure is chargeable with notice thereof, and hence the referee on the foreclosure sale should not allow him the amount unpaid on the fixtures, but should pay the same over to the proper depository for the benefit of a junior mortgagee. *Foreman v. Nordon Construction Co.* (1915), 167 App. Div. 712, 152 N. Y. Supp. 592.

§ 65. Sale of property retaken by vendor.

The purpose of the statute is to protect the public against owners and unreasonable contracts of conditional sale very likely to be misunderstood. *Lanston Monotype Machine Co. v. Curtis* (1915), 224 Fed. 403.

Interstate commerce.—Although this section is not a regulation of interstate commerce, it may indirectly affect such commerce. *Lanston Monotype Machine Co. v. Curtis* (1915), 224 Fed. 403.

A contract for the conditional sale of property to be shipped from another State to this State, executed here, is governed by the law of this State. Hence, where such a vendor retakes the property, he does so subject to the provisions of the statute, and, not having sold the same as required by the statute, is liable for the amount paid on account. *Lanston Monotype Machine Co. v. Curtis* (1915), 224 Fed. 403.

"Conditional sale."—Where money is paid either on the purchase price of furniture which is to become the property of the one who made the payment or as rent for the use of the furniture, the transaction must be construed as a "conditional sale" within the meaning of this section, if upon payment in full of the purchase price it is agreed that the title to the furniture is to vest in the vendee. *Ostrander v. Bricka* (1915), 91 Misc. 255, 154 N. Y. Supp. 786.

Possession of vendor.—It is not essential that the conditional vendor take actual, physical possession of property in order to set the period running within which he must make a sale thereof. Hence, where a conditional vendor loads property on

cars requisitioned by him, it must be deemed to have been in his possession at the time when the last of it was loaded. *Breakstone v. Buffalo Foundry & Machine Co.* (1915), 167 App. Div. 62, 152 N. Y. Supp. 394.

The seizure and sale by a marshal, pursuant to an execution, of property the subject of a contract of conditional sale is not a retaking by the vendor under the provisions of the Personal Property Law. *West Publishing Co. v. Gluck* (1915), 92 Misc. 198, 155 N. Y. Supp. 514.

The assignment by the conditional vendee of his rights under the contract is not a "retaking" within the meaning of this section. But where the original vendee of the furniture was discharged from the employ of the assignee of the vendor's right under the contract of sale, who turned her out of the house where the furniture was, it was "retaken by the vendor or his successor in interest," and not having been sold at public auction within sixty days from the assignment, as required by the statute, the vendor was liable to the vendee for the amount of all purchase moneys paid. *Ostrander v. Bricka* (1915), 91 Misc. 255, 154 N. Y. Supp. 786.

Recovery of payments.—See *Lanston Monotype Machine Co. v. Curtis* (1915), 224 Fed. 403.

Waiver by subsequent agreement of provisions as to sale of property retaken by vendor.—Where the vendor of a piano, at the request of the purchaser under a contract of conditional sale who had defaulted in payment, took the instrument upon storage until she should be able to pay the storage and cartage, and after holding it under such agreement and without further payment for several months, upon her further request made a new agreement under which the piano was to be surrendered, and the purchaser whenever ready to buy another should be allowed all payments on the first contract, less storage and interest, the provisions of this section of the Personal Property Law as to the sale of property retaken by a conditional vendor were waived by the new contract. *Nyboe v. Doll & Sons* (1915), 167 App. Div. 225, 152 N. Y. Supp. 650.

A vendee, under a contract of conditional sale, may, when he is in default, by an agreement with the vendor, by which the latter is induced to retake the property, waive or become estopped from asserting any rights he might otherwise have had under the statute, if the vendor had reclaimed the property *as a matter of right*, by virtue of the terms of the contract. *Breakstone v. Buffalo Foundry & Machine Co.* (1915), 167 App. Div. 62, 152 N. Y. Supp. 394.

In an action to recover the amount paid on the purchase price of machinery under a contract of conditional sale, the plaintiffs claimed that the vendor, on retaking the property, failed to sell the same within the time prescribed by this section of the Personal Property Law. After the vendee had made the first payment he assigned the contract to a corporation formed to take over his business, which was subsequently adjudicated a bankrupt, and thereafter nothing was paid under the contract. Upon the appointment of the trustee in bankruptcy, his attorney and the attorney for the defendant had a conversation to the effect that the defendant would release the lien on one of the machines purchased, and give the trustee a reasonable time in which to sell the other one, if the trustee would, at the expiration of such time, if he was unable to find a purchaser, release the machine to him. Thereafter, the trustee, being unable to effect a sale, was willing to transfer the first machine to the defendant, conceding that there was no equity therein for the creditors, and, in order to avoid calling a meeting of creditors, proposed to transfer the machine to the plaintiffs who had made an offer to purchase one of the plants of the bankrupt. After this sale the defendant proceeded to dismantle the machine and load it upon cars, which it had requisitioned, for shipment to its factory, where it was subsequently advertised and sold. The plaintiffs held mortgages on the bankrupt's property, and there was no sale or assignment of the conditional contract of sale to them. It was *held*, on all the evidence, that a judgment in

favor of the plaintiff should be reversed and a new trial granted; that it was a question of fact whether or not the trustee in bankruptcy had waived or was estopped from asserting any claim against the defendant for failure to sell the property under the statute. *Breakstone v. Buffalo Foundry & Machine Co.* (1915), 167 App. Div. 62, 152 N. Y. Supp. 394.

See generally *Lefkoff v. Bauch* (1915), 90 Misc. 294, 152 N. Y. Supp. 1090.

§ 96. Implied warranties of quality.

Where goods are known and sold by trade name there is no implied warranty arising from the fact that the vendor is then a manufacturer. *Sure Seal Co. v. Loeber* (1916), 171 App. Div. 225, 157 N. Y. Supp. 327.

§ 126. Delivery in installments.

Application.—The provision that a buyer of goods is not bound to accept delivery by installments unless otherwise agreed, has no application to a contract of sale made and to be performed without the State. It will be presumed by our courts that the common law is applicable to such sale in the absence of proof to the contrary. *Baltimore & Ohio R. R. Co. v. Lowenstein* (1916), 171 App. Div. 137, 157 N. Y. Supp. 5.

§ 127. Delivery to carrier on behalf of buyer.

Application of section; delivery to express company.—In view of rule 5 of section 100 of the Personal Property Law, the legislature in section 127 merely intended to provide for a case in which the contract itself on the part of the buyer became complete upon shipment, and did not intend to change the common law rule that, where a contract required a delivery to the buyer at his place of business or any other place, the contract was not fulfilled until such delivery was actually made. Proof of delivery to an express company as the agent of the seller does not show a delivery to the buyer. *Hauptman v. Miller* (1916), 94 Misc. 266, 157 N. Y. Supp. 1104.

§ 129. What constitutes acceptance.

Retention of goods long after their purchase; recovery of damages for breach of warranty.—About two months after defendant had purchased certain dresses of plaintiff and made a payment on account she asked to be allowed to return two or three of the dresses which she claimed did not fit and on plaintiff's refusal defendant returned them with a statement that they were total misfits and unsalable, with a check for the balance. It was *held*, that the retention of the goods for so long after their purchase remitted defendant to her right to recover damages for breach of warranty, if any such right exists, and that she had no right under section 129 of the Personal Property Law to return the goods. *Salomon v. Olkin* (1915), 91 Misc. 17, 154 N. Y. Supp. 204.

§ 130. Acceptance does not bar action for damages.

Application.—Where defendants were sued for the purchase price of goods sold and delivered, an allegation in a counterclaim that they "duly offered to return to the plaintiff the merchandise referred to which was so defective," etc., is a sufficient compliance with this section. *Kugelman v. Ritter* (1915), 90 Misc. 279, 152 N. Y. Supp. 1027. As to waiver of defect by acceptance of goods, see *Iterboro Brewing Co. v. Independent Consumers' Ice Co.* (1915), 93 Misc. 25, 156 N. Y. Supp. 410.

§ 137. When lien is lost.

The common-law rule that a vendor's lien on personal property is extinguished where the buyer acquires both title and possession from the seller, still exists and

is incorporated into the present Personal Property Law. Thus, where a seller of goods delivers to the buyer a negotiable warehouse receipt, he cannot afterwards replevy the goods from a trustee appointed on the bankruptcy of the buyer, for the negotiation of the receipt vested the buyer both with title and right of possession. *Rummell v. Blanchard* (1915), 167 App. Div. 654, 153 N. Y. Supp. 159.

§ 139. When goods in transit.

Acceptance of bill of lading by consignee, and delivery of draft for purchase price; refusal to accept goods because of defect; right of stoppage in transitu.—Where the consignee of a carload of oats on their arrival at destination accepted from the carrier a bill of lading marked "cancelled" and also accepted a draft for the purchase price and forwarded the same to the seller as payment, conditioned upon the draft being honored at maturity, the seller's right of stoppage *in transitu* was terminated by reason of delivery. Hence, although the buyer subsequently refused to accept the oats when an inspection showed them to be defective, and stopped payment on the draft, moneys representing the value of the oats which were sold by the carrier at public auction belonged not to the seller, who attempted to assert a right of stoppage *in transitu* after recovering judgment against the buyer on his draft, but on the contrary where the buyer subsequently made a general assignment for creditors, the moneys belonged to his trustee. Moreover, the action on the draft brought by the seller and the defense thereto asserted by the buyer, was a recognition by both of them that the sale had been completed by delivery, and the judgment for the seller in said action was an adjudication that the title was in the buyer. *Northern Grain Co. v. Wiffler* (1915), 168 App. Div. 95, 153 N. Y. Supp. 723.

§ 143. Effect of sale of goods subject to lien or stoppage in transit.

Purpose and effect.—This section and section 133 of the General Business Law are designed only to protect an innocent purchaser of goods for value without notice after the seller has stopped the goods either by virtue of his right of stoppage *in transitu*, or under his seller's lien; they do not change the common-law rule that a seller loses his lien by transferring to the buyer a negotiable warehouse receipt representing the goods sold. *Rummell v. Blanchard* (1915), 167 App. Div. 654, 153 N. Y. Supp. 159, *affd.* 216 N. Y. 348, holding that no right of stoppage in transit exists in respect of merchandise in possession of a warehouseman for storage.

§ 148. Action for failing to deliver goods.

Under the provision of this section, that "when there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver," the buyer of lumber then in harbor available for delivery before the date when the seller refused to deliver is entitled to recover the difference between the contract price and the current or market price for lumber available for delivery on the date of such refusal. If the lumber could have been purchased afloat within the port of New York, at which point it was to be delivered, the buyer's measure of damages would be the difference between the contract price and such market price instead of the market price for lumber brought from the south at some indefinite time. But, if there was no available market for lumber afloat, the market price of lumber of the kind and quantity specified in the contract without regard to whether it came from yards or vessels must be taken. *Fowler v. Gress Manufacturing Co.* (1916), 94 Misc. 650, 158 N. Y. Supp. 524.

§ 150. Remedies for breach of warranty.

Acceptance; waiver of breach of warranty.—Where, in an action for goods sold and delivered, the defendants pleaded breach of warranty as to quality, both as a defense and as a counterclaim, and it appeared that although only a brief time was necessary to make an examination of the goods, the defendants made no attempt to make such examination and made no offer to return the goods until more than two weeks after their receipt, the breach of warranty will be deemed to have been waived. The only right which survived defendants' acceptance of the goods was one for damages, which was not sustained by the evidence. *Silberstein v. Blum* (1915), 167 App. Div. 660, 153 N. Y. Supp. 34.

Acceptance of property by a purchaser does not discharge the seller from liability for breach of warranty in the absence of an agreement to that effect. *Peuser v. Marsh* (1915), 167 App. Div. 604, 153 N. Y. Supp. 381.

Breach of warranty; set-off in action of replevin.—A buyer made a defendant in an action in replevin to recover the possession of property purchased under a conditional contract of sale may, after electing to accept and retain the property, plead a breach of warranty as a defense by way of recoupment, but cannot allege damages sustained by the breach of warranty as a counterclaim. *Peuser v. Marsh* (1915), 167 App. Div. 604, 153 N. Y. Supp. 381.

This provision of the Personal Property Law modifies the common-law rule that the buyer of personal property upon a conditional sale has no right in an action of replevin to recoup, set off or counterclaim the damages sustained by a breach of warranty. *Peuser v. Marsh* (1915), 167 App. Div. 604, 153 N. Y. Supp. 381.

Rescission; breach of warranty.—Under this section an action may be brought on the theory of a rescission of the contract and for a recovery of the amount paid on account of the purchase price whether the sale is an absolute or a conditional one. Where an action to recover the entire purchase price of a chattel, sold upon condition that title shall not pass to the buyer until full payment, is tried upon the theory of a rescission of the contract of sale based upon the breach of an express warranty, it is error to dismiss the complaint even though the title to the chattel had not passed to plaintiff on account of his failure to complete payment. *Shimel v. Williams Oven Mfg. Co.* (1916), 93 Misc. 174, 156 N. Y. Supp. 1060.

PHARMACY.

Licenses; Public Health L., § 233.

PLATTSBURGH.

L. 1916, ch. 269.—An act to authorize the commissioners of the land office to cede to the United States of America certain lands in the city of Plattsburgh, Clinton county, for a site for a memorial in honor of Commodore Thomas Macdonough, in commemoration of his victory on Lake Champlain in September, eighteen hundred and fourteen. (*In effect Apr. 24, 1916.*)

Section 1. The commissioners of the land office are hereby authorized to cede and convey to the United States of America such portion of land in the city of Plattsburgh which may and shall be acquired by the people of the state of New York, through the Plattsburgh centenary commission, in pursuance of chapter seven hundred and thirty of the laws of nineteen hundred and thirteen, as amended by chapter eight hundred and twenty-eight of the laws of nineteen hundred and thirteen, and further amended

L. 1916, ch. 269.

Macdonough memorial at Plattsburgh.

§ 1.

by chapter ninety-five of the laws of nineteen hundred and fourteen, and further amended by chapter six hundred and sixteen of the laws of nineteen hundred and fifteen, and also by chapter nine hundred and eighty-seven* of the laws of nineteen hundred and sixteen, as shall be required by the United States of America for a site for a monument or memorial to Commodore Thomas Macdonough, in pursuance of an appropriation made by chapter two hundred and twenty-three of the second session of the sixty-third congress, for the erection of such memorial at Plattsburgh, in commemoration of the victory of Commodore Thomas Macdonough on Lake Champlain in September, eighteen hundred and fourteen, in accordance with plans to be approved by the secretary of war; and the said commissioners of the land office are further authorized to grant letters patent to the United States of America for such lands which may and shall be required by the United States of America, upon the presentation of a petition to the said commissioners of the land office, to be presented by the secretary of war, and without consideration.

PLUMBING.

Further regulation of business; General City L., § 45-b.

* So in original. Chapter 116 evidently intended.

POOR LAW.

(L. 1909, ch. 46.)

§ 3. County superintendents of the poor.—*Subd. 10 amended by L. 1916, ch. 275, in effect Apr. 24, 1916, as follows:*

10. Draw on the county treasurer for all necessary expenses incurred in the discharge of their duties, including their necessary personal expenses while in the discharge of such duties and their necessary expenses in attending the midwinter and annual state conventions of county superintendents of the poor, which draft shall be paid by such treasurer out of the moneys placed in his hands for the support of the poor.

Subd. 14, as amended by L. 1912, ch. 75, amended by L. 1916, ch. 275, in effect Apr. 24, 1916, as follows:

14. Pay over to the county treasurer on the first day of each month all moneys received by him from any source in his official capacity or otherwise received by him and belonging to the county, since the date of the preceding payment, except such moneys as are paid out by him for incidental expenses in connection with the duties of his office, for which expenditure he shall present with such monthly report vouchers and itemized statements showing dates and purposes of such expenditures. All payment which he is authorized to make under this chapter, except as herein specified, shall be made only by orders drawn on the county treasurer, payable to the person entitled thereto and showing upon the face thereof the purpose for which the order is given.

The right of a superintendent of the poor to draw drafts on the county treasurer for his personal expenses, if it ever existed, has been taken away by chapter 75 of the Laws of 1912 (amending this section), providing that the superintendent of the poor shall pay over to the county treasurer all moneys received by him, etc., and make payments only by orders drawn on the county treasurer payable to the person entitled thereto and showing upon the face thereof the purpose for which the order is given. Said statute makes it unlawful for the superintendent to disburse moneys himself directly and he cannot draw a draft to his own order for personal expenses. A superintendent of the poor asking a writ of mandamus to compel the payment of the draft drawn by him on the county treasurer for personal expenses is under the burden of showing that such expenses were a county charge. *Strong v. Williams* (1915), 167 App. Div. 714, 153 N. Y. Supp. 175.

§ 29. Overseers of the poor in cities.

Change in title of office.—The council of the city of Niagara Falls, elected under an optional city government law (L. 1914, chap. 444), cannot change the title of the office of overseer of the poor to that of commissioners of charities. *Atty. Genl. Opin.*, 6 State Dep. Rep. 452 (1916).

§ 30. Hospital accommodations for indigent persons.—1. Any city or

L. 1916, ch. 483.

Hospital accommodations for poor.

§§ 40, 42.

county, in which a hospital duly incorporated is situated, may send to and support, in the same, such sick and disabled indigent persons as require medical or surgical treatment, and when admitted the authorities of such city or county shall pay to such hospital such sum per week as may be agreed upon or found to be just during the period in which such person shall remain in such hospital.

2. In all counties of this state in which there are not adequate hospital accommodations for indigent persons requiring medical or surgical care and treatment, or in which no appropriations of money are made for this specific purpose, it shall be the duty of county superintendents of the poor, upon the certificate of a physician approved by the board of supervisors, or of the overseers of the poor in the several towns of such counties, upon the certificate of a physician approved by the supervisor of the town, as their jurisdiction over the several cases may require, to send all such indigent persons requiring medical or surgical care and treatment to the nearest convenient and suitable hospital, the incorporation and management of which have been approved by the state board of charities, provided transportation to such hospital can be safely accomplished. The authorities of such county or town shall pay to such hospital such reasonable sum per week, for the care and treatment of such indigent persons, as may be agreed upon by the authorities of the county or town and the directors of such hospital, and provision for the payment for such care and treatment shall be made in the annual budgets of such county or town. (*Amended by L. 1912, ch. 309, and L. 1916, ch. 483, in effect May 9, 1916.*)

§ 40. Settlements, how gained.

Jurisdiction of Court of Special Sessions of New York; settlement.—Where the complainant in a bastardy proceeding had a settlement in the county of Kings, when the bastard was born, the Court of Special Sessions of the city of New York has jurisdiction, although she resided in a foreign State, but not for a period exceeding six months, when the proceeding was begun. Commissioner of Public Charities v. Vassle (1915), 167 App. Div. 74, 152 N. Y. Supp. 496.

§ 42. Poor persons not to be removed, and how supported.

Application.—C, a laborer of full age but of nomadic habits, came into this state in which he never had a place called home, and after working on April 2, 1914, in Ontario county, where there is no distinction between town and county poor, became ill and was taken by the superintendent of the poor of that county to the county hospital, and upon his recovery several weeks later went to work and continued to be employed in said county for several months, being self-supporting all of that time. Thereafter he went to Groton, Tompkins county, where the distinction between town and county poor is still maintained and while at a hotel before securing employment he was taken with pneumonia and given temporary relief and furnished with medical care by the superintendent of the poor of Tompkins county, and being unable to work was assisted by said superintendent for four or five weeks. He had not lived in any one place in the county of Ontario for a year prior to 1914. In an action by the county of Tompkins to charge the county of Ontario with the support of C, held that when he left Ontario county with money and still had money when he went to Groton in Tompkins county he

§§ 52, 54, 56, 61.

Removal of poor persons.

L. 1916, ch. 175.

was not a "poor person" straying from one county to another, and that he became so only when he was again overtaken by misfortune and became ill and then that the same duty devolved upon plaintiff to care for him in the emergency as had devolved upon defendant county on the occasion of his previous sickness, and that he was entitled under this section to be supported by plaintiff, he not having a settlement in any city or town. *County of Tompkins v. County of Ontario* (1915), 92 Misc. 272, 156 N. Y. Supp. 335.

§ 52. **Liability, how contested.**—The county superintendents, or overseers, or other persons to whom such notice may be directed may, after the service of such notice, take and remove such poor person to their county, town or city, and there support him, and pay the expense of such notice, and of the support of such person; or they shall, within thirty days after receiving such notice, by a written instrument under their hands, notify the county superintendents from whom such notice was received, or either of them, that they deny the allegation of such improper enticing or removal, or that their town, city or county is liable for the support of such poor person. Upon the application of such county superintendent, overseer or other person so notified, and upon proper proof, the county judge of the county wherein such superintendent, overseer or other person to whom such notice shall have been directed, resides, shall issue a warrant directed to the sheriff of the county, or to some other proper person or persons, directing him or them to take and remove such poor person from the place where he may be, to the county, city or town legally chargeable for his support. (*Amended by L. 1916, ch. 175, in effect Apr. 30, 1916.*)

§ 54. **Actions when and how to be brought.**—Upon service of any such notice of denial the county superintendents upon whom the same may be served, shall, within three months commence an action in the name of their county, against the town, city or county so liable for the expense incurred in the support of such poor person, and prosecute the same to effect; if they neglect to do so, their town, city or county, shall be precluded from all claim against the town, city or county to whose officers such first notice was directed. Such action shall be tried in the county in which the cause of action arose, subject to the power of the court to change the place of trial in the cases provided by law. (*Amended by L. 1916, ch. 203, in effect Apr. 12, 1916.*)

§ 56. **Poor children under sixteen years of age.**

See *People ex rel. New York Juvenile Asylum v. Board of Supervisors* (1915), 168 App. Div. 863, 153 N. Y. Supp. 1076.

§ 61. **Mother and child poor persons; proceedings against county or town from which she was removed.**—Such mother and her child shall, in all respects, be deemed poor persons; and the same proceedings may be had by the county superintendents to charge the town, city or county from which she was removed or enticed, or shall have of her own accord come or strayed, for the expense of supporting her and her child, as are provided

L. 1916, ch. 532.

Relief of soldiers and veterans.

§ 81.

in the case of poor persons; and an action may be maintained in the same manner for said expenses and for all expenses properly incurred in apprehending the father of such child, or in seeking to compel its support by such father or its mother. (*Amended by L. 1916, ch. 205, in effect Apr. 12, 1916.*)

§ 81. **Post or camp to give notice that it assumes charge.**—The commander of any such post or camp which shall undertake to supervise the relief of poor veterans or their families, as herein provided, before his acts shall become operative in any town, city or county, shall file with the clerk of such town, city or county, a notice that such post or camp intends to undertake such supervision of relief, which notice shall contain the names of the relief committee, commander and other officers of the post or camp; and also an undertaking to such city, town or county, with sufficient and satisfactory sureties for the faithful and honest discharge of his duties under this article; such undertaking to be approved by the treasurer of the city or county, or the supervisor of the town, from which such relief is to be received. Such commander shall annually thereafter, during the month of October, file a similar notice with said city or town clerk, with a detailed statement of the amount of relief requested by him during the preceding year, with the names of all persons for whom such relief shall have been requested, together with a brief statement in each case, from the relief committee, upon whose recommendation the relief was requested, provided, however, that in cities of the first class, said notice and said detailed statement shall be filed with the comptroller of such city, and said undertaking shall be approved by him, and provided further that in any city of the first class which is now or may hereafter be divided into boroughs, such notice, and such detailed statement, each in duplicate, shall be filed with the comptroller, and he shall forward one of said duplicates to the commissioner or deputy commissioner of charities for the borough in which the headquarters of such post or camp is situated, except that in the boroughs of the city of New York, no undertaking shall be filed by the commander or the committee of the post or camp nor shall any annual statement of the amounts of relief granted be required. And it shall be the duty of the commissioner of charities to annually include in his estimate, of the amount necessary for the support of his department, such sum or sums of money as may be necessary to carry into effect the provisions of sections eighty, eighty-one, eighty-three, and except in the city of New York, eighty-four and eighty-five of this chapter, and the proper officers charged with the duty of making the budget of any such city shall annually include therein such sum or sums of money as may be necessary for that purpose. Provided, further, that in the city of New York the relief shall be paid direct to the beneficiaries by the commissioner of public charities on a written recommendation signed by the relief committee, the commander and the quartermaster of such post or camp. The comptroller

of the city of New York shall, out of the amount appropriated for such relief, provide a cash fund to be placed under the control of the commissioner of public charities from which to pay such relief, and he shall replenish said fund upon presentation of properly receipted recommendations for the amounts paid out of said fund. Moneys actually laid out and expended except in the boroughs of the city of New York by any such post or camp for the relief specified in section eighty of this chapter shall be reimbursed monthly to such post or camp by the comptroller on vouchers duly verified by the commander and quartermaster of said post or camp, showing the date and amount of each payment, the certificate of the post or camp relief committee, signed by at least three members, none of whom shall have received any of the relief granted by the post for which reimbursement is asked, showing that the person relieved was an actual resident of such city, and that they recommend each payment, and the receipt of the recipient for each payment, or in case such receipt could not be obtained, a statement of such fact, with the reason why such receipt could not be obtained. Such vouchers shall be made in duplicate on blanks to be supplied by the comptroller and shall be presented to the commissioner of public charities for the borough in which the headquarters of the post or camp is situated, and if such commissioner is satisfied that such moneys have been actually expended as in said voucher stated, he shall approve the same, and file one of said duplicates in his office and forward the other to the comptroller, who shall pay the same by a warrant drawn to the order of the said commander. And provided further that in the city of New York if the comptroller is satisfied that a poor or indigent soldier, sailor or marine, who has served in the military or naval service of the United States, or his family, and has been honorably discharged therefrom, or the families of any who may be deceased, are in actual want, and that immediate relief is needed by either, provided he or they shall have been residents of the state for the year last past, and is or are actual residents of said city, he may in his discretion authorize and empower the commander of the post or camp to furnish relief to him, or them, in a reasonable amount, and pay the amount by warrant to the commander of the post or camp, taking the receipt in duplicate of the commander of the post or camp therefor, and file one of said receipts in his office, and forward the other to the commissioner or deputy commissioner of charities for the borough in which the headquarters of the post or camp is situated; and said duplicate receipts shall be the vouchers for the payment of the same. And provided further, that in any city, county or borough, in which Grand Army posts or camps have organized or may organize a memorial and executive committee, the latter shall be regarded as a post of the Grand Army of the Republic or a camp of the United Spanish War Veterans. And the chairman, treasurer, or almoner and bureau of relief or relief committee referred to, shall exercise the same privileges and powers as the commander, quartermaster and relief committee of a post or camp, on com-

L. 1916, ch. 379. Distinction between town and county poor.§ 138.

plying with the requirements of this and the preceding section. Wilful false swearing to such voucher shall be deemed perjury and shall be punishable as such. (*Amended by L. 1910, ch. 102, L. 1913, ch. 594, L. 1915, ch. 563, and L. 1916, ch. 532, in effect May 12, 1916.*)

§ 138. Boards of supervisors may abolish or revive distinction between town and county poor.—The board of supervisors of any county may, at an annual meeting or at a special meeting called for that purpose, by resolution, abolish or revive the distinction between town and county poor of such county, as to poor persons over the age of sixteen years, or as to poor persons of the age of sixteen years or under, or as to both, by a vote of two-thirds of all the members elected to such board, and until such abolition or revival, such county, or the towns therein, shall continue to maintain and support their poor as at the time when this chapter shall take effect. The clerk of the board shall, within thirty days after such determination, serve, or cause to be served, a copy of the resolution upon the clerk of each town, village or city within such county, and upon each of the superintendents and overseers of the poor therein. Upon filing such determination to abolish the distinction between such town and county poor, duly certified by the clerk of the board, in the office of the county clerk, such poor of the county shall thereafter be maintained, and the expense thereof defrayed by the county; and all costs and charges attending the examinations, conveyance, support and necessary expenses of such poor persons therein, shall be a charge upon the county. Such charges and expenses shall be reported by the superintendent of the poor, to the board of supervisors, and shall be assessed, levied and collected the same as other county charges. (*Amended by L. 1916, ch. 379, in effect May 1, 1916.*)

PRISON LAW.

(L. 1909, ch. 47.)

§ 50. **Reports of prison officers.**—The agent and warden of every prison, the superintendent or manager of every penitentiary, the keeper of every jail or other institution used for the detention of sane adults charged with or convicted of crime or detained as witnesses or debtors, subject to the visitation of the commission, shall, besides such information as may from time to time be required of him by the state commission of prisons pursuant to the powers hereinbefore conferred, on or before the first day of August in each and every year, report to said commission the number of male and female persons charged with crime and awaiting trial, the number convicted of crime, the number detained as witnesses and as debtors in his custody on the first day of July last past, together with a statistical exhibit of the number of admissions, discharges and deaths which have occurred within the past year, the nature of the charge, the period of detention or sentence, and such other facts and information as the commission may require. (*Amended by L. 1916, ch. 118, § 21, in effect Apr. 3, 1916.*)

§ 121. **Annual report of superintendent.**—It shall be the duty of the superintendent of state prisons on or before the tenth day of January in each year to report to the legislature in writing the condition of each of the prisons for the year ending with the last day of the previous June, specifying the number of convicts confined during such year, and for what offenses, the number transferred from any prison and the reason therefor in each case, the moral, intellectual and physical condition of the prisoners and how employed, the amount of money expended during such year and how, in detail, the amount of money earned during such year and how, in detail, the amount paid into the treasury during such year, and such other matters as may seem pertinent and proper in the judgment of the superintendent. (*Amended by L. 1916, ch. 118, § 22, in effect Apr. 3, 1916.*)

§ 125. **Deposit of convicts' deposits and earnings.**

Payment to convicts.—Neither money nor articles brought to a prison by a convict upon his commitment, or any of his earnings, can be paid to him, except with the approval of the superintendent of state prisons, and also the agent and warden of the prison, and all money standing to the credit of a prisoner should be withheld from him until the provisions of the Prison Law relative to the payment of such funds have been fully complied with. Atty. Genl. Opin., 5 State Dep. Rep. 478 (1915).

§ 129. **Annual report.**—The agent and warden of each of said prisons shall, on or before the fifteenth day of August in each year, render to the

L. 1916, ch. 118.

General duties of clerk.

§§ 134, 136.

superintendent of state prisons a full and true report for the year ending with the last day of the previous June, of all moneys received by him on account of the prison under his charge, and all the moneys expended under his direction for the use thereof, and also an inventory of the goods, raw materials and other property of the state on hand on the last day of the previous June, which account and inventory shall be attested by the oath of the agent and warden and clerk of the prison to be just and true, together with a statement of all changes in the officers of such prison during such year, and the annual reports to the agent and warden of the clerk, physician and chaplain of each prison, and such other matters as shall be required by the superintendent of state prisons. (*Amended by L. 1916, ch. 118, § 23, in effect Apr. 3, 1916.*)

§ 134. Convicts' money and other property; what to be furnished them on release.

Payment to convicts.—Neither money nor articles brought to a prison by a convict upon his commitment, or any of his earnings, can be paid to him, except with the approval of the superintendent of state prisons, and also the agent and warden of the prison, and all money standing to the credit of a prisoner should be withheld from him until the provisions of the Prison Law relative to the payment of such funds have been fully complied with. Atty. Genl. Opin., 5 State Dep. Rep. 478 (1915).

§ 136. General duties of clerk.—It shall be the duty of the clerk of each of said prisons to conform to the rules of discipline established by the superintendent of state prisons, and to perform his duties as prescribed by the comptroller in accordance with law; to keep a register of convicts, in which the names of the convicts shall be alphabetically arranged, and in which shall be entered, under appropriate columns, the date of conviction, where born, age, occupation, complexion, stature, crime, court in which, county where convicted, term of sentence, number of previous convictions, to what prison or prisons previously sent, when discharged and how discharged, and such additional facts as the superintendent of state prisons may require to be stated on the register; to annually report to the agent and warden of such prison on the first day of August the number of convicts remaining in prison on the last day of the previous June, the number received during the year ending with the last day of the previous June, the number discharged by expiration of sentence, habeas corpus or by the courts, the number of deaths and escapes, and the number transferred to any other penal institution during such year, and the number remaining in prison on the last day of said June; to keep books of account of the financial transactions of the prison; to keep a separate account in a book provided for that purpose of all money and other articles received by the agent and warden from each convict, crediting such convict therefor; to enter each bill taken by the agent and warden of the prison in the books of the prison at the time of the receipt of the articles mentioned in such account, and in case the articles received do not agree in all respects

with the invoice, he shall immediately notify the agent and warden of such discrepancy, and note in his book the discrepancy, whether in weight, quantity or quality; to preserve in the prison a set of all official reports made to the legislature respecting the same, and a set of similar reports in relation to each of the other state prisons, and for that purpose a suitable number of such reports, when printed, shall be supplied to him by the superintendent of state prisons; to make an annual report, attested by his oath to be just and true, to the secretary of state, on or before the first day of September of each year, stating the names of convicts discharged or pardoned from said prison during the year ending with the last day of the preceding June, and all the particulars in relation to such convicts as are required to be stated in the agent and warden's monthly report to the superintendent of state prisons, and stating also, in the cases of pardons, the time unexpired of the time for which the convicts so pardoned were respectively pardoned, when such pardons were granted, and the conditions, if any, on which they were granted, and also the state of health of each convict so pardoned at the time of his discharge. (*Amended by L. 1915, ch. 105, and L. 1916, ch. 118, § 24, in effect Apr. 3, 1916.*)

§ 182. **Articles manufactured to be furnished to the state or division thereof.**—The superintendent of state prisons, and the superintendents of reformatories and penitentiaries, respectively, are authorized and directed to cause to be manufactured by the convicts in the prisons, reformatories and penitentiaries, such articles as are needed and used therein, and also such as are required by the state or political divisions thereof, and in the buildings, offices and public institutions owned or managed and controlled by the state, including articles and materials to be used in the erection of the buildings. All such articles manufactured in the state prisons, reformatories and penitentiaries, and not required for use therein, shall be of the styles, patterns, designs and qualities fixed by the board of classification, and may be furnished to the state, or to any political division thereof, or for or to any public institution owned or managed and controlled by the state, or any political division thereof, at and for such prices as shall be fixed and determined as hereinafter provided, upon the requisitions of the proper officials, trustees or managers thereof. No article so manufactured shall be purchased from any other source, for the state or public institutions of the state, or the political divisions thereof, except uniforms for the inmates of the New York State Soldiers and Sailors' Home or of the New York State Women's Relief Corps Home, unless said state commission of prisons shall certify that the same can not be furnished upon such requisition, and no claim therefor shall be audited or paid without such certificate. (*Amended by L. 1916, ch. 533, in effect May 12, 1916.*)

§ 187. **Disposition of moneys paid to prisoner for his labor.**

Payment to convicts.—Neither money nor articles brought to a prison by a con-

L. 1916, ch. 358.

Parole of prisoners.

§§ 211, 211a.

vict upon his commitment, or any of his earnings, can be paid to him, except with the approval of the superintendent of state prisons, and also the agent and warden of the prison, and all money standing to the credit of a prisoner should be withheld from him until the provisions of the Prison Law relative to the payment of such funds have been fully complied with. Atty. Genl. Opin., 5 State Dep. Rep. 478 (1915).

§ 211. Prisoners subject to parole.—Every person confined in a state prison, or reformatory, under sentence for a definite term for a felony, who has never before been convicted of a crime punishable by imprisonment in a state prison, shall be subject to the jurisdiction of the board of parole for state prisons and may be paroled in the same manner and subject to the same conditions and penalties as prisoners confined under indeterminate sentences. The minimum and maximum terms of the sentences of said prisoners are hereby fixed and determined to be as follows: The definite term for which each person is sentenced shall be the maximum limit of his term and if the definite term for which the person is sentenced is two years or less the minimum limit of his term shall be one year. If the definite term for which the person is sentenced is more than two years, one-half of the definite term of his sentence shall be the minimum limit of his term. Such minimum term and the minimum term fixed by an indeterminate sentence shall, for the purpose of such parole, be subject to further diminution on account of compensation earned as provided in article nine of this chapter. (*Amended by L. 1909, chs. 240, 489, and L. 1916, ch. 358, in effect May 1, 1916.*)

Second offender not entitled to parole.—A defendant who, after having been convicted of a felony in another State, is convicted in this State of arson in the first degree and given a definite sentence, is a second offender, and is not entitled to parole. Atty. Genl. Opin., 4 State Dep. Rep., 579 (1915).

§ 211-a. Parole of certain indeterminates.—Each person confined in a state prison who has never before been convicted of a crime punishable by imprisonment in a state prison, having an indeterminate sentence whose minimum, unless fixed by law, is more than one-half of the maximum penalty prescribed by law for the crime of which he was convicted, or who may hereafter receive such sentence, shall, when he has served a period of time equal to one-half the maximum penalty prescribed by law for the crime of which he was convicted or when he has served such period less the time earned as compensation and deducted therefrom under the provisions of article nine of this chapter, be subject to the jurisdiction of the board of parole for state prisons and said board shall have the same authority as to the parole and discharge of such prisoner that it would have had if the minimum sentence imposed by the court had been for a period equal to one-half the maximum penalty prescribed by law for the offense of which he was convicted, but no person shall be paroled who has served less than one year. (*Added by L. 1910, ch. 669, and amended by L. 1916, ch. 358, in effect May 1, 1916.*)

§ 212. **Meetings of board; applications for parole or discharge.**—A majority of the board of parole for state prisons shall constitute a quorum for the transaction of business and they shall meet at each of said prisons ten times each year upon dates to be fixed by them and at such other times and places as they may deem necessary. Each prisoner confined in the state prisons may one month prior to the expiration of the minimum term of his sentence, as fixed by law or imposed by the court, make application to the board, in writing and in such form as they may prescribe, for his release upon parole, or for an absolute discharge as hereinafter provided, and said board is hereby prohibited from entertaining any other form of application or petition for the release upon parole or absolute discharge of any prisoner. Where the minimum term of a prisoner shall be further diminished on account of compensation earned, as provided in article nine of this chapter, such prisoner may make such application either at the next meeting of the board after the prisoner has received notice of such diminution or at the first meeting of the board occurring after the expiration of ten days from the receipt of such notice. (*Amended by L. 1910, ch. 703, and L. 1916, ch. 358, in effect May 1, 1916.*)

§ 230. **Definite sentence; indeterminate sentence; commutation; compensation.**—1. A sentence to imprisonment in a state prison for a definite fixed period of time is a definite sentence. A sentence to imprisonment in a state prison having minimum and maximum limits fixed by the court is an indeterminate sentence.

2. Every convict confined, at the time this section as hereby amended takes effect, under a definite sentence in any state prison or penitentiary in this state, on a conviction of a felony or misdemeanor, whether male or female, where the terms or term equal or equals six months exclusive of any term which may be imposed by the court or by statute as an alternative to the payment of a fine, or a term of life imprisonment, may continue to earn for himself or herself, in the same manner as heretofore and notwithstanding the amendments to this section, the commutation or diminution of his or her sentence or sentences which he or she has been heretofore entitled to earn, namely: five days for each month of a period less than a year, two months for the first year, two months for the second year, four months each for the third and fourth years, and five months for each subsequent year. Any such convict may also earn in each period of thirty days of the unexpired term, counting from the day on which this section as hereby amended takes effect, in further reduction of his or her sentence, as compensation for efficient and willing performance of duties assigned to him or her, not to exceed two and one-half days in any such thirty-day period in which the duties assigned are performed in the manner above specified.

3. Every convict, whether male or female, hereafter received into a state prison or penitentiary in this state, under a definite sentence, on a

L. 1916, ch. 358.

Warden to report to governor.

§ 233.

conviction of a felony or misdemeanor, where the terms or term equal or equals six months exclusive of any term which may be imposed by the court or by statute as an alternative to the payment of a fine, or a term of life imprisonment, may earn for himself or herself, by good conduct, a commutation or diminution of his or her sentence or sentences as follows: Not to exceed two and one-half days for each month of a period less than a year; not to exceed one month each for the first three years; not to exceed two months each for the fourth, fifth and sixth years; not to exceed three months each for the seventh, eighth and ninth years; not to exceed four months each for the tenth, eleventh and twelfth years; not to exceed five months each for the thirteenth, fourteenth and fifteenth years; not to exceed six months each for the sixteenth, seventeenth and eighteenth years; and not to exceed seven months each for any subsequent year. Any such convict, and any convict now confined in any such prison or penitentiary who is subject to the jurisdiction of the parole board and any convict hereafter received into any such prison or penitentiary under an indeterminate sentence, may also earn in each period of thirty days, counting from the day when his or her imprisonment began, or in the case of a convict now confined who is subject to the jurisdiction of the parole board, from the time this section as hereby amended takes effect, in further reduction of his or her definite sentence, or in reduction of the minimum term in the case of a present convict who is subject to the jurisdiction of the parole board or is hereafter confined under an indeterminate sentence, as compensation for efficient and willing performance of duties assigned to him or her, not to exceed ten days in any such thirty-day period in which the duties assigned are performed in the manner above specified.

4. An account shall be kept in suitable books by the agent and warden with each convict entitled to earn compensation under the provisions of this section, and at the end of each thirty-day period the agent and warden shall credit the convict with the time earned as such compensation within such period and shall enter the same in such account. (*Amended by L. 1912, ch. 79, and L. 1916, ch. 358, in effect May 1, 1916.*)

§ 233. **Warden to report monthly to governor; contents.**—On any day not later than the twentieth day of each month, the agent and warden of each of the state prisons in this state, and the warden or superintendent of each of the penitentiaries in this state, shall forward to the governor a report, directed to him, of any convict whose term may be diminished and any convict who, in the case of a convict not subject to the jurisdiction of the board of parole, may be discharged the following month, by reason of the commutation of his or her sentence, or on account of compensation earned, in the manner provided in this article, which may be written or printed, or partly written and partly printed, which shall be uniform as to size and arrangement, which size and arrangement shall be fixed by the governor, and shall contain the following information, distinctly writ-

ten, namely: The full name of the convict, together with any alias which he or she may be known to have, the name of the county where the conviction was had, a brief description of the crime of which the convict was convicted, the name of the court in which the conviction was had, the name of the presiding judge, the date of sentence, the date of reception in the prison or penitentiary and the term and fine. In all cases the report shall show the amount of commutation and compensation recommended, and the date of expiration of the term and, in the case of convicts not subject to the jurisdiction of the parole board, the date for discharge, if such commutation or compensation, or either, be allowed. (*Amended by L. 1916, ch. 358, in effect May 1, 1916.*)

§ 234. **Terms expiring on holidays and Sundays.**—In the case of all convicts where the date of expiration of term or date of such expiration accompanied with discharge from a state prison or penitentiary, as determined after diminution of sentence under the provisions of this article, falls on Sunday, or any legal holiday, it shall fall on the day following. (*Amended L. 1916, ch. 358, in effect May 1, 1916.*)

§ 235. **Rules for allowance of commutation and compensation; change thereof.**—The superintendent of state prisons shall formulate rules governing the allowance or disallowance of commutation to convicts for good conduct and diminution of sentence on account of compensation earned for efficient and willing performance of duties assigned to them in prison or penitentiary. All such rules shall in all cases be strictly adhered to in all the prisons and penitentiaries in this state. These rules may be changed from time to time, if necessary, in the discretion of the superintendent of state prisons, and he shall immediately on their adoption or of any changes in the same thereafter, cause copies of the same to be forwarded to the agents and wardens of all the prisons, and the wardens or superintendents of all the penitentiaries in this state. A copy of these rules shall be furnished to every convict entitled to the benefits of this article. (*Amended by L. 1916, ch. 358, in effect May 1, 1916.*)

§ 236. **Allowance of commutation and compensation to be determined by prison board; regulations respecting the same; part of commutation or compensation may be withheld.**—For the purpose of applying the rules mentioned in the last section for the allowance or disallowance of commutation for the good conduct of any convict, and for the allowance of compensation under the provisions of this article for efficient and willing performance of duties assigned, a board shall be constituted in each of the prisons of this state, to consist of the agent and warden, the principal keeper, the physician therein and the superintendent of industries, and, in each of the penitentiaries of this state, the warden or superintendent, the deputy or principal keeper and the physician therein, or of the persons acting in their place and stead. This board shall meet once in each month before

L. 1916, ch. 358.

Commutation; compensation.

§§ 238-242.

the date fixed for the transmission of their report to the governor, as hereinbefore provided, and proceed to determine the amount of commutation and compensation which they shall recommend to be allowed to any convict, which shall not in any case exceed the amount fixed by this article. They shall have full discretion to recommend the withholding of the allowance of commutation for good conduct, or compensation, or of a part thereof, as a punishment for offenses against the discipline of the prison or penitentiary, in accordance with the rules hereinbefore mentioned. Compensation credited to a convict in the first instance, in his account, by the agent and warden, as provided in section two hundred and thirty, shall stand as the compensation allowed, unless withheld wholly or partly by the board as punishment, as above provided. (*Amended by L. 1916, ch. 358, in effect May 1, 1916.*)

§ 238. **Forfeiture of commutation and compensation for escapes.**—In case any convict in any of the state prisons or penitentiaries in this state having a sentence or sentences which equals or equal four years, escapes or attempts to escape, he or she shall, for the first escape or attempt to escape, forfeit one-half of the amount of commutation and compensation provided for in this article. For the second escape or attempt to escape, he or she shall forfeit all such commutation and compensation. Any convict, however, having a sentence or sentences which equals or equal less than four years, who escapes or attempts to escape, shall forfeit all compensation and commutation provided for in this article. But where a convict has more than one term, the provisions of this section shall only apply to the term during which the escape or attempt to escape was made. (*Amended by L. 1916, ch. 358, in effect May 1, 1916.*)

§ 241. **Reports to governor, how signed.**—The reports of the various boards for the determination of the amount of compensation or commutation in the prisons and penitentiaries of this state to the governor, shall be personally signed by the members thereof. (*Amended by L. 1916, ch. 358, in effect May 1, 1916.*)

§ 242. **Power of governor to grant compensation or commutation.**—The governor, upon the receipt of the report recommending the allowance of diminution of sentences of convicts as provided for in this article, may, in his discretion, allow the same, in whole or in part, as to any or all of such convicts. He shall place the names of all convicts whose sentences he may determine to reduce who are subject to the jurisdiction of the parole board upon a list, prepared in duplicate, each of which shall have his written order annexed thereto directing such reduction and specifying the date of expiration of the minimum term as reduced. He shall place the names of all other convicts so reported whose sentences he may determine to reduce upon his warrant for their discharge, specifying the date of discharge in each case. Such warrant shall be directed to the agent and

warden of the state prison, or the warden or superintendent of the penitentiary, wherein such convicts may be confined. One copy of any such list of convicts subject to the jurisdiction of the parole board, with the accompanying order, shall be transmitted by the governor to the parole board and one copy to the agent and warden of the prison in which the convicts named in the list are confined. The agent and warden shall give immediate written notice thereof to each convict whose minimum term is thereby reduced. Any such warrant for the discharge of other convicts shall be transmitted to the officer to whom it is directed, who shall thereupon proceed to execute such warrant by discharging the convicts mentioned therein on the date fixed for their discharge. (*Amended by L. 1916, ch. 358, in effect May 1, 1916.*)

§ 243. Governor to annex condition to discharge; return of convict to prison for violation.—The governor shall, in reducing the sentences of convicts not subject to the jurisdiction of the board of parole, annex a condition to the effect that if any such convict shall, during the period between the date of his discharge by reason thereof and the date of the expiration of the full term for which he was sentenced, be convicted of any felony, committed in the interval as aforesaid, he shall, in addition to the sentence which may be imposed for such felony and before beginning the service of such sentence be compelled to serve in the prison or penitentiary in which he may be confined for the felony for which he is so convicted, the remainder of the term without commutation which he would have been compelled to serve but for the commutation of his sentence as provided for in this article; but he may, however, earn compensation in reduction of the remainder of such term. (*Amended by L. 1910, ch. 403, and L. 1916, ch. 358, in effect May 1, 1916.*)

§ 244. Certificate of warden as to commutation or compensation may be received in evidence.—The certificate of the agent and warden of a state prison or the warden or superintendent of a penitentiary, that the period of imprisonment of a convict was commuted, or diminished by compensation, under the provisions of this article, and of the crime and the length of term for which such commutation or diminution was granted, shall be received in evidence as proof for the purposes mentioned and described in section two hundred and forty-three. (*Amended by L. 1916, ch. 358, in effect May 1, 1916.*)

§ 245. Convicts to be informed of this article.—Upon the receipt of any convict in any prison or penitentiary in this state who shall be entitled to the benefits of this article, the provisions of the same, and if he be subject to the jurisdiction of the parole board, the provisions of article eight of this chapter, shall be read to him or her and the meaning of the same shall be fully explained to him or her by the clerk of the prison or penitentiary. (*Amended by L. 1916, ch. 358, in effect May 1, 1916.*)

L. 1916, ch. 118. Transportation of discharged prisoners. §§ 246, 249, 283, 324.

§ 246. **Proceedings upon discharge.**—Upon the discharge of any convict by reason of commutation or reduction of sentence, the provisions of sections two hundred and forty-three and two hundred and forty-four of this article shall be read and their nature fully explained, to him or her, by the clerk of the prison or penitentiary. (*Amended by L. 1916, ch. 358, in effect May 1, 1916.*)

§ 249. **Meaning of certain terms; provisions of article not to apply to certain institutions.**—The term “compensation,” as used in this article, means time allowed in reduction of sentence on account of efficient and willing performance of duties assigned; and such compensation shall not be withheld, in any thirty-day period, from a convict to whom no duties are assigned in such period. The provisions of this article shall not apply to prisoners in any institution to which chapter five hundred and seventy-nine of the laws of nineteen hundred and fifteen applies, who are committed thereto as provided in that act. (*Added by L. 1916, ch. 358, in effect May 1, 1916.*)

§ 284. **Reformatories; state board of managers.**—*Subd. 6 amended by L. 1916, ch. 118, § 25, in effect Apr. 3, 1916, as follows:*

6. Report to the legislature, annually, on or before the tenth day of January, for the year ending with the last day of the next preceding June, the condition of said reformatories, the amount of money received and expended by them during such year with a detailed statement thereof; their proceedings in regard to the prisoners therein, and such other matters as they may deem proper, or as the legislature may require.

§ 324. **Money and transportation to be furnished prisoners on discharge.**—It shall be the duty of the superintendent of a county penitentiary to furnish to each convict, male or female, who shall have been convicted of a felony, and imprisoned therein in pursuance of the provisions of statute, upon his or her discharge from the penitentiary, by pardon or otherwise, necessary clothing not exceeding twelve dollars in value, except for the time between the first day of November and the first day of April, when clothing not exceeding eighteen dollars in value may be given; and a sum of money not exceeding, on an average, five dollars, as the superintendent may deem proper and necessary; and a railroad ticket or tickets for the transportation of one person from the penitentiary to the place of his or her conviction, or to such other place as said convict may designate at no greater distance from the penitentiary than the place of conviction. It shall be the duty of the superintendents of said penitentiaries to make a return to the comptroller of this state, under oath, on the thirtieth day of June of each year, in which he shall fully set forth the name of each convict received in said penitentiaries by virtue of statute, in what court convicted, before what presiding justice or judge, the offense for which conviction was had, the date of such conviction and length of sentence, date

of reception of such convict at such penitentiaries, and the date of his or her discharge therefrom; and in detail, the sums of money paid by them under the foregoing provisions of this section. The comptroller shall thereupon audit and allow to such penitentiaries such sum as may be found due to them, under the foregoing provisions, during the year preceding said thirtieth day of June, and shall draw his warrant upon the treasury of the state in favor of the superintendent of each penitentiary, for the amount so audited and allowed, payable out of any money in the treasury not otherwise appropriated. (*Amended by L. 1916, ch. 118, § 26, in effect Apr. 3, 1916.*)

§ 325. Separation of adults and minors in county penitentiaries.—Prisoners who are minors, detained in any county penitentiary, shall not be placed, or kept, or allowed to be, at any time, with any adult prisoner, or prisoners, in any room, dormitory, cell, tier or corridor of the buildings of such institution, or on its grounds, or, while for any purpose, outside such buildings or grounds. Such minor prisoners shall not be placed or kept or allowed to be, at any time, with any adult prisoner or prisoners, in any other room or subdivision of the buildings of such institution unless separately grouped in such manner as to make intercommunication with adult prisoners impossible. (*Added by L. 1916, ch. 394, in effect May 2, 1916.*)

PRISONS.

Extending and developing functions of workhouses, penitentiaries and reformatories in cities; see Cities.

L. 1916, ch. 594.—An act to reorganize the commission on new prisons, to define its powers and duties, to provide for the establishment of a new farm and industrial prison and the construction of new buildings at Sing Sing prison, making appropriations for such purposes and repealing certain acts relating to the commission on new prisons. (*In effect May 18, 1916.*)

§ 1. Commission on new prisons continued and reorganized.—The commission on new prisons, as established by chapter six hundred and seventy of the laws of nineteen hundred and six, is continued, and shall hereafter consist of the superintendent of state prisons, the superintendent of public works and the state architect and two persons to be appointed by the governor, with the powers and duties prescribed by this act. Upon the taking effect of this act the terms of office of the commissioners of new prisons now in office and of all officers and employees of such commission shall expire.

§ 2. Secretary; expenses; site for new prison; contracts.—The commission may employ a secretary and fix his compensation, which shall not exceed one thousand dollars in any fiscal year. Each commissioner and the secretary shall be paid his necessary expenses incurred in the discharge of his official duties. Such commission shall select either the site heretofore acquired by the state at Wingdale for prison purposes, or the site heretofore acquired by the state at Beekman for a farm and industrial colony for tramps and vagrants as a site for the construction thereon of a new farm and industrial prison, in accordance with the provisions of this act. Such commission shall adopt and approve plans, to be prepared or approved by the state architect, or if the commission so determine, to be prepared by other architects after public competition for the location, construction and equipment of the buildings needed for such prison, and, subject to the provisions of this act as to the employment of prison labor, may enter into a contract or contracts for the erection and completion of such prison upon terms believed by the commission to be most advantageous to the state, at a total cost not exceeding one million two hundred and fifty thousand dollars, for the buildings and for the heat, light and power equipment thereof. Such contract or contracts shall provide that the state shall not be liable for any failure on the part of the legislature to appropriate sufficient money for the completion of the contract or contracts within the terms thereof. All contracts in connection with the construction of such prison plant, and all estimates and vouchers for the payment of money thereunder, shall be approved by the commission prior to their audit by the

comptroller. If the commission determines that a public competition for plans shall be held it shall follow so far as practicable the rules for competitions laid down by the American Institute of Architects.

§ 3. **New buildings at Sing Sing.**—Such commission shall also select a location on the site of the state prison at Sing Sing for the construction thereon of such new buildings as may be necessary for the purposes of a receiving and distribution station for an industrial prison for prisoners committed to state prison. Such commission shall adopt and approve plans, to be prepared or approved by the state architect, for the erection and equipment of such new buildings and for the demolition of the present cell house and cell block at Sing Sing. Such commission may, subject to the provisions of this act as to the employment of prison labor, enter into a contract or contracts for the erection and completion of such new buildings, at a total cost of not exceeding seven hundred and fifty thousand dollars. Such contract or contracts shall provide that the state shall not be liable for any failure on the part of the legislature to appropriate sufficient money for the completion of the contract or contracts within the terms thereof.

§ 4. **Architects; prison labor to be employed.**—The state architect may, with the approval of the commission on new prisons, employ an architect or architects or such assistants and superintendents of construction as may be necessary to prepare the plans and specifications and to locally supervise the work of construction provided for by this act, whose compensation, not exceeding four per centum of the total cost of construction, shall be paid out of the funds appropriated for such work. Prison labor shall, so far as practicable, be employed in the work authorized by this act, and for such purpose the superintendent of state prisons is hereby authorized to transfer prisoners from any state prison to the site selected for the new farm and industrial prison authorized by this act. The commission is authorized to erect temporary barracks for the custody of such prisoners. The state superintendent shall continue to have the custody, control and maintenance of all prisoners so transferred.

§ 5. **Appropriations.**—The sum of two hundred thousand dollars (\$200,000) is hereby appropriated for the construction of the said new buildings and the demolition of the old cell block and cell house at Sing Sing prison, as authorized by this act, and the sum of two hundred thousand dollars (\$200,000) is hereby appropriated for beginning the construction of the new farm and industrial prison, as authorized by this act. Such money shall be payable by the treasurer on the warrant of the comptroller on the order of such commission.

§ 6. **Transfers to new commissions.**—All property, books, papers, records and documents pertaining to the office, powers and duties of the commission on new prisons in the possession or under the control of such com-

L. 1916, ch. 594.

Commission on new prisons.

§§ 7-9.

mission or the members thereof or their subordinates shall, on the taking effect of this act, be delivered on demand to the commission on new prisons as reorganized by this act.

§ 7. **Repeal of L. 1906, ch. 670.**—Chapter six hundred and seventy of the laws of nineteen hundred and six, entitled “An act to establish a new state prison in the eastern part of the state to take the place of Sing Sing prison; to authorize the governor to appoint a commission to select and purchase a site,” as amended by chapter five hundred and twenty-one of the laws of nineteen hundred and seven, chapters two hundred and eight and two hundred and fourteen of the laws of nineteen hundred and eight, chapters one hundred and sixty-six and four hundred and forty-seven of the laws of nineteen hundred and nine and chapter six hundred and ninety-three of the laws of nineteen hundred and ten, is hereby repealed.

§ 8. **Repeal of L. 1910, ch. 365.**—Chapter three hundred and sixty-five of the laws of nineteen hundred and ten, entitled “An act to authorize the commission on new prisons to select and purchase another site for the new state prison to take the place of Sing Sing, and use money for such purpose heretofore appropriated to said commission,” is hereby repealed.

§ 9. **Claims not invalidated.**—Nothing in this act shall be construed to invalidate any claim or claims against the state accrued or accruing under any valid contract or contracts.

L. 1916, ch. 362.—An act authorizing the sale of surplus electric current produced at Clinton prison to the village of Dannemora. (*In effect May 1, 1916.*)

§ 1.—The agent and warden of Clinton prison, subject to the consent and approval of the superintendent of state prisons, may enter into a contract with the board of trustees of the village of Dannemora to sell to such village, and said trustees are hereby authorized and empowered to purchase in behalf of such village, the surplus electric current not needed for the use and purpose of such prison. Any such contract shall be prepared, and shall be approved as to form and sufficiency of execution, by the attorney-general and shall be for such period of time as shall be agreed upon by the parties thereto. Such contract shall provide for the delivery of such surplus electric current at such prison grounds, and upon terms and conditions of payment to be set forth in the contract.

§ 2.—All moneys received for the use of such surplus electric current shall be paid by the agent and warden into the prison capital fund of such prison.

PUBLIC HEALTH LAW.

(L. 1909, ch. 49.)

§ 14. Approval of plans for certain works built by the state.

The erection of sewage disposal plants for State institutions, having been approved by the State Department of Health, cannot be restrained by a municipality as constituting a nuisance, until their operation demonstrates them to be such. Atty. Genl. Opin. (1915), 4 State Dep. Rep. 558.

§ 17. Violations of health laws or regulations.—Any person violating, disobeying or disregarding the terms of any lawful notice, order or regulation prescribed by the state commissioner of health or by the sanitary code, or any provision of the public health law or sanitary code, for which a civil penalty is not otherwise expressly prescribed by law, shall be liable to the people of the state for a civil penalty of not to exceed fifty dollars for every such violation. The said penalty may be recovered by an action brought by the state commissioner of health in any court of competent jurisdiction. Nothing in this section contained shall be construed to alter or repeal any existing provision of law declaring such violations or any of them misdemeanors or felonies or prescribing the penalty therefor. (*Added by L. 1915, ch. 384, and amended by L. 1916, ch. 372, in effect May 1, 1916.*)

§ 20. Local boards of health.—There shall continue to be local boards of health and health officers in the several cities, villages and towns of the state except as hereinafter provided. In the cities, except cities of the first and second class, the board shall consist of the mayor of the city who shall be its president, and at least six other persons, one of whom shall be a competent physician, who shall be appointed by the common council, upon the nomination of the mayor, and shall hold office for three years. Appointments of members of such boards shall be made for such shorter terms as at any time may be necessary, in order that the terms of two appointed members shall expire annually. In the cities, except cities of the first and second class, and such other cities whose charters otherwise provide, the board shall appoint, for a term of four years, a competent physician, not one of its members, to be the health officer of the city, and shall fill any vacancy that now exists or may hereafter exist from expiration of term or otherwise in the office of health officer of the city. In villages the board of health shall consist of the board of trustees of such village. In towns the board of health shall consist of the town board. The local board of health shall appoint a competent physician, not a member of the local board of health, to be the health officer of the municipality. The term of office of the health officer shall be four years and he shall hold office

until the appointment of his successor. He may be removed for just cause by the local board of health or the state commissioner of health after a hearing; such removal by the local board of health must be approved by the state commissioner of health. The health officer need not reside within the village or town for which he shall be chosen. Notice of the membership and organization of every local board of health shall be forthwith given by such board to the state department of health. The term "municipality," when used in this article, means the city, village, town or consolidated health district for which any such local board may be or is appointed. The provisions herein contained as to boards of health, and for the appointment of health officers, shall apply to all towns and villages, whether such villages are organized under general or special laws. The members of town boards and of village boards of trustees and of boards of health of consolidated health districts shall not receive additional compensation by reason of serving as members of boards of health. Any matter within the jurisdiction of a town or village board of health may be considered and acted upon at any meeting of such town board or village board of trustees.

The state commissioner of health, on the request of the town board of any town and the board of trustees of any village and the common council or other like authority of any city, may combine into one health district, hereinafter referred to as a consolidated health district, any two or more of such towns, villages or cities and may on the request of the town board of any town, board of trustees of any village or common council or other like authority of any city at any time thereafter set apart such town, village or city as a separate health district. In any consolidated health district there shall be a board of health which shall consist of the supervisor of each town, the president of the board of trustees of each village, and the mayor of each city included in each district, provided that if the number of members so provided for is an even number, such members shall within thirty days after such district shall have been established by the state commissioner of health choose an additional member of such board of health to be known as the elective member. An elective member shall serve for a term of two years from the first day of January preceding his election and until his successor shall have been appointed, provided that if at any time the number of members of the board of health, excluding the elective member, shall become an odd number, the term of office of the elective member shall thereupon cease.

The board of health of a consolidated health district shall from time to time elect a president from among its members. The health officer of a consolidated health district shall serve as the secretary of the board of health thereof without additional remuneration therefor.

In each such consolidated health district the board of health shall appoint a health officer. Each board of health and each health officer of a consolidated health district shall have all the rights, powers, duties and obli-

gations conferred and imposed by law upon boards of health and health officers respectively.

When any consolidated health district is established, as herein provided, the boards of health of the towns, villages or cities included within such district, shall thereupon cease to exist as boards of health, and all their rights, powers, duties and obligations shall thereupon be transferred to the board of health of such district. When the board of health of any such consolidated health district shall have appointed a health officer therefor, the terms of office of the health officers of the towns, villages or cities included in such district shall cease, and all their rights, powers, duties and obligations shall thereupon be transferred to and imposed upon the health officer appointed for such consolidated health district.

The board of health of any such consolidated health district shall from time to time audit all accounts, and allow or reject all charges, claims and demands against such health district for the remuneration and expenses of the health officer, registrar or registrars, and for all other expenses lawfully incurred by said board of health or on its authority. Unless such board of health of such consolidated health district adopts the estimate system of payment as provided by this section they shall, prior to the annual meeting of the board of supervisors each year, make an abstract, to be known as the consolidated health district abstract, of the names of all persons who have presented to them accounts to be audited, the amounts claimed by each such person and the amounts finally audited and approved by them respectively, and, if such district be wholly in one county, shall deliver such abstract to the clerk of the board of supervisors. If such consolidated health district be located in more than one county the board of health of such district shall divide the total amount of the consolidated health district abstract as audited and approved in proportion to the assessed valuation of the real and personal property of the towns, villages or cities of such consolidated health district located in each county, as determined by the last preceding assessment-rolls of the towns or cities wholly or partly included in such district, and shall deliver a certified copy of such abstract to the board of supervisors of each such county, with a statement of the amount due from the real and personal property of each town, village or city of the consolidated health district in each such county on account of the expenses of such board. The board of supervisors of each such county shall levy a tax upon the real and personal property within such health district sufficient to provide for the sums audited and approved by the board of health thereof and chargeable to the real and personal property of each town, village or city of the consolidated health district in each such county. Such sums, when collected and paid to the county treasurer of each such county respectively, shall be paid by him to the president of such board of health and shall be disbursed by him in accordance with the abstract of claims audited and approved by such board of health, as hereinabove provided.

L. 1916, ch. 371. Carriers of disease; care and maintenance.

§§ 21, 36a.

The board of health of any consolidated health district may annually make an estimate of the expenses of such board for the ensuing calendar year and, if such district be wholly in one county, shall deliver a certified copy of such estimate to the clerk of the board of supervisors of such county prior to the annual meeting of the board preceding such year. If such consolidated health district be located in more than one county, the board of health of such district shall proportion the total amount of such estimate in the same manner as provided by this section for proportioning the expenses of such a district when audited and approved by the board, and shall deliver to the clerk of the board of supervisors of each such county a certified statement of the total estimate and the amount due from the real and personal property of each town, village or city of the consolidated health district in each such county on account thereof. The board of supervisors of each such county shall levy a tax upon the real and personal property within such health district sufficient to provide for the portion of the amount of such estimate chargeable to the real and personal property of each town, village or city of the consolidated health district in each such county. Such sums, when collected and paid to the county treasurer of each county respectively shall be paid by him to the president of such board of health and shall be disbursed by the board of health in accordance with the estimates. After such estimate system has been adopted by a consolidated health district, the board of health thereof shall deduct from the estimate for the succeeding calendar year the amount, if any, remaining in the hands of such board after all of the liabilities incurred on account of the preceding estimate have been paid, before the certified statement of the total estimate and the amount due from the real and personal property of each town, village or city of the consolidated health district in each such county is certified to the respective clerks of the boards of supervisors for collection. (*Amended by L. 1909, ch. 165, L. 1913, ch. 559, L. 1915, chs. 124, 555, and L. 1916, ch. 369, in effect May 1, 1916.*)

Amendment by L. 1915, chap. 555, does not supersede the health provisions of the charter of the city of Mechanicville (L. 1915, chap. 170) as regards composition of the board of health of said city, because said provisions are to be deemed as having been enacted not subsequent to the charter but prior thereto. Atty. Genl. Opin., 5 State Dep. Rep. 447 (1915).

§ 21. General powers and duties of local boards of health.

Power to make ordinances; penalty for disobedience of ordinances.—A village board of health has the power under this section to make both general and special orders for the protection of the public health. Under this statute, where such an order was made which did not prescribe any penalty, such board is without power, after the order has been disobeyed, to prescribe for the first time a penalty for the wrong already done. *Village of Carthage v. Colligan* (1915), 216 N. Y. 217, affg. 158 App. Div. 793.

§ 36-a. Providing for the care and maintenance of carriers of disease.—Whenever an individual is declared by the state commissioner of health as

§§ 39, 76, 103, 138.

Quarantine.

L. 1916, ch. 371.

being a carrier of typhoid fever bacilli and whenever, for the protection of the public health, the state commissioner of health shall have certified to the necessity of continued quarantine; or, whenever, in accordance with rules and regulations adopted by the state commissoiner* of health a carrier of the germs of typhoid fever is prevented from carrying on any occupation which would enable him to gain a livelihood, such individual may be given hospital or institutional care under the surveillance of the local health officer at the expense of the state if such hospital or institution in the judgment of the state commissioner of health be properly equipped for the care and maintenance of said individual.

When no such hospital or institution is available and when in the opinion of the state commissioner of health such individual may be cared for at home or in a private family with due regard to the protection of the public health the local charities commissioner or overseer of the poor shall, in accordance with rules and regulations adopted by the commissioner of health, furnish necessary medical attendance and maintenance. No expenditure for the purposes herein authorized shall be contracted for or incurred by any local overseer of the poor or charities commissioner until after such expenditure has been authorized and approved by the state commissioner of health. A verified statement of any such approved expense incurred hereunder shall be transmitted by the local overseer of the poor or charities commissioner to the state commissioner of health. The commissioner of health shall examine this statement and if satisfied that such authorized expenses are correct and necessary in accordance with rules and regulations adopted by him he shall audit and allow the same and when so audited the amount thereof shall be paid by the state treasurer on the warrant of the comptroller to such institution or local poor officer. (*Added by L. 1916, ch. 371, in effect May 1, 1916.*)

§ 39. Certain kinds of business and manufacture prohibited in cities or within three miles thereof.

Injunction.—When motion for injunction denied. *Cahill v. Moran* (1915), 91 Misc. 301, 155 N. Y. Supp. 23.

§ 76. Discharge of sewage into certain waters prohibited.

When discharge from municipal filtration plant unlawful.—*Western New York Water Co. v. City of Niagara Falls* (1915), 91 Misc. 73, 154 N. Y. Supp. 1046.

§ 103. Custody of quarantine establishment.

Use of fees by health officer of port of New York.—The health officer of the port of New York may, with the approval of the Governor, in the case of an emergency, expend such portion of the fees collected by him as are necessary, notwithstanding the provision of section 37 of the State Finance Law that he turn over such fees on the 5th day of each month. *Atty. Genl. Opin.*, 5 State Dep. Rep. 545 (1915).

§ 138. Lien for services and expenses.

Filing of notice of lien, provided for by section 10 of the Lien Law, is a prere-

* So in original.

L. 1916, ch. 328.

Practice of medicine.

§§ 160, 166, 173.

quisite to the enforcement of a lien under section 138 of the Public Health Law. The *Athinal* (1916), 230 Fed. 1017.

§ 160. Medicine; definitions.

Osteopathy.—No person is authorized to advertise and hold himself out to the world as an osteopath in this state, without he is regularly licensed to do so as provided by statute, but a regular allopathic or homeopathic physician can employ any means which he deems expedient to bring about a cure or to alleviate a suffering condition, even if the method adopted by him is identical with that adopted by the osteopath, without procuring a license as an osteopath. *Atty. Genl. Opin.*, 5 State Dep. Rep. 524 (1915).

§ 166. Medicine; admission to examination.—*Subd. 3 amended by L. 1916, ch. 328, in effect Apr. 27, 1916, as follows:*

3. Had prior to beginning the first year of medical study the general education required by the rules of the regents preliminary to receiving the degree of bachelor or doctor of medicine in this state.

Subd. 5, as amended by L. 1912, ch. 141, amended by L. 1916, ch. 328, in effect Apr. 27, 1916, as follows:

5. Has either received the degree of bachelor or doctor of medicine from some registered medical school, or a diploma or license conferring full right to practise medicine in some foreign country unless admitted conditionally to the examinations as specified above, in which case all qualifications, including the full period of study, the medical degree and the final examinations in surgery, obstetrics, gynecology, pathology, including bacteriology, and diagnosis must be met. The degree of bachelor or doctor of medicine shall not be conferred in this state before the candidate has filed with the institution conferring it the certificate of the regents that before beginning the first annual medical course counted toward the degree, he had earned a medical student qualifying certificate in accordance with the rules of the regents, the minimum requirement for which, for matriculates after January first, nineteen hundred and seventeen, shall be the successful completion of an approved four-year high school course or its equivalent.

§ 173. Construction of this article.

In an action to recover for medical services rendered by plaintiff, a physician duly commissioned as a first lieutenant in the Medical Reserve Corps of the United States Army, appointed by the President of the United States pursuant to an act of Congress designated as the Act of April 23, 1908, chapter 150, it was admitted that plaintiff was never registered to practice medicine in this state nor authorized to practice medicine under the Public Health Law of this state. *Held*, that as plaintiff's duties as a medical officer do not begin, unless promoted to the Medical Corps, until called into active duty, he was not serving in the United States Army and, therefore, was not within the saving clause contained in this section, which provides that the statute shall not be construed to affect commissioned medical officers serving in the United States Army, etc., and that a judgment in his favor should be reversed and the complaint dismissed. *Haberlin v. Englehardt* (1916), 94 Misc. 154, 157 N. Y. Supp. 839.

§ 174. Penalties.

Unlawful practice of medicine by pharmacy company.—A person who advertises

§§ 190, 192, 195.

Practice of dentistry.

L. 1916, ch. 129.

under his trade name as "The Standard Pharmacy Company" to give a free medical examination, and employs a duly licensed physician for such purpose, and issues cards entitled, "Card for free examination. Medical and surgical office of The Standard Pharmacy Company," giving the address and directing the doctor to make examination and give medical advice to the bearer who is now using remedies of the company, and to make no charge to the holder of the card, but to charge the same to the company, and giving the office hours, may be deemed to hold himself out under his trade name as being able to diagnose and treat diseases, and hence, may be convicted of practicing medicine unlawfully, in violation of this section of the Public Health Law. *People ex rel. Lederman v. Warden of City Prisons* (1915), 168 App. Div. 240, 152 N. Y. Supp. 977.

§ 190. **Definitions.**—As used in this article, the terms "university," "regents" and "physicians" have respectively the meanings defined in article eight of this chapter. "Board," where not otherwise limited, means the board of dental examiners of the state of New York. "Registered medical or dental school" means a medical or dental school, college or department of a university, registered by the regents as maintaining a proper educational standard and legally incorporated. "Examiner," where not otherwise qualified, means a member of the board. "State dental society" means the dental society of the state of New York.

Practice of dentistry. A person practices dentistry within the meaning of this article, who holds himself out as being able to diagnose, treat, operate, or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, or jaws, and who shall either offer or undertake by any means or method to diagnose, treat, operate, or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the same. (*Amended by L. 1916, ch. 129, in effect Sept. 1, 1916.*)

§ 192. **District dental societies.**

This section is exclusive and compels proposed dental societies to incorporate thereunder, instead of under the Membership Corporations Law. (1915), Atty. Genl. Opin., 4 State Dep. Rep. 555.

§ 195.—1. State board of dental examiners. The existing state board of dental examiners shall be divided into four classes and their terms of office shall continue except that said terms shall expire on the thirty-first day of July in each year. After July thirty-first, nineteen hundred and ten, the state board of dental examiners shall be increased by the addition of a member residing in the ninth judicial district, who shall be appointed in the manner provided by this section, for a term of four years, commencing on the first day of August, nineteen hundred and ten, and who shall be a member of the class whose terms commence on such date. Before the day when the official terms of the members of any of said classes shall expire, the regents shall appoint their successors, to serve for the term of four years from said day. Such appointment shall be made from nominations in number twice the number of the outgoing class made by such society to

the regents prior to the second Tuesday in June of each year, or in default of such nominations from the licensed and registered dentists of the state who have been members of the state dental society for not less than ten years prior to the time of the appointment. The regents, in the same manner, shall also fill vacancies in the board that may occur. All nominations and appointments shall be so made that every vacancy in the board shall be filled by a resident of the same judicial district in which the last incumbent of the office resided. The board shall elect at its annual meeting from its members a president and shall hold one or more meetings each year pursuant to call of the regents. No person shall be appointed an examiner unless he shall have received a dental degree from a body lawfully entitled to confer the same, and in good standing at the time of its conferment, and shall have been engaged within the state during not less than five years prior to his appointment in the actual and lawful practice of dentistry. Nor shall any person connected with a dental school as professor, trustee or instructor be eligible to such appointment. Cause being shown before them the regents may remove an examiner from office on proven charges of inefficiency, incompetency, immorality or unprofessional conduct.

2. Secretary of the board. The secretary shall be a licensed dentist who has been in practice in this state for at least five years with a degree of D.D.S. He shall be appointed by the regents, shall hold office during their pleasure, and shall receive an annual salary of four thousand dollars, payable from moneys received under this article. He shall have such powers and shall perform such duties as are prescribed by the rules of the regents. (*Amended by L. 1910, ch. 137, and L. 1916, ch. 129, in effect Sept. 1, 1916.*)

§ 196. **Examinations.**—The regents shall admit to examination any candidate who shall pay the fee herein prescribed and submit satisfactory evidence, verified by oath if required, that he:

1. Is more than twenty-one years of age;
2. Is of good moral character;
3. Has a preliminary education equivalent to graduation from a four year high school course registered by the regents, or an education accepted by the regents as fully equivalent.
4. Subsequently to receiving such preliminary education either has been graduated in course with a dental degree from a registered dental school, or else, having been graduated in course from a registered medical school with a degree of doctor of medicine, has pursued thereafter a course of special study of dentistry for at least two years in a registered dental school and received therefrom its degree of doctor of dental surgery, or else holds a diploma or license conferring full right to practice dentistry in some other of the United States or in some foreign country and granted by some licensing board, college, school or university registered by the regents as maintaining an educational standard equal to that required of dental colleges

of this state, or else has lawfully practiced dentistry for more than twenty-five years without this state and within the United States; but the examination for those who have lawfully practiced for twenty-five years in other states shall be a practical examination only. The regents may also in their discretion on or after June first, nineteen hundred and sixteen, admit conditionally to the examination in anatomy, physiology, chemistry and metallurgy and histology, applicants twenty years of age certified as having studied dentistry not less than two years, including two satisfactory courses in two different calendar years, in a dental school registered as maintaining at the time a satisfactory standard, provided that such applicants meet the second and third requirements of candidates for examination. If a candidate fails on final examination, he may have a second examination without fee; but for every examination subsequent an additional fee of twenty-five dollars shall be required. Any member of the board may inquire of any applicant for examination concerning his qualifications and may take testimony of any one in regard thereto, under oath, which he is hereby empowered to administer.

5. Any dental dispensary or infirmary legally incorporated and registered by the regents, and maintaining a proper standard and equipment may establish for women students a course of study in oral hygiene, all such students upon entrance shall present evidence of attendance of one year in the high school, and may be graduated in one year as dental hygienists, upon complying with the preliminary requirements to examination by the board, which are:

A. A fee of five dollars.

B. Evidence that they are at least twenty years of age and of good moral character.

C. That they have complied with and fulfilled the preliminary and professional requirements and the requirements of the statute.

After having satisfactorily passed such examination they shall be registered and licensed as dental hygienists by the regents under such rules as the regents shall prescribe.

6. Any licensed dentist, public institution or school authorities may employ such licensed and registered dental hygienists. Such dental hygienists may remove lime deposits, accretions and stains from the exposed surfaces of the teeth, but shall not perform any other operation on the teeth or tissues of the mouth. They may operate in the office of any licensed dentist, or in any public institution or in the schools under the general direction or supervision of a licensed dentist, but nothing herein shall be construed as authorizing any dental hygienist performing any operation in the mouth without supervision. The regents may revoke the license of any licensed dentist who shall permit any dental hygienist operating under his supervision to perform any operation other than that permitted under the provisions of this section, and they may also revoke the license of any dental

L. 1916, ch. 129.

Practice of dentistry.

§§ 197, 198.

hygienist violating the provisions of this act. (*Amended by L. 1911, ch. 786, and L. 1916, ch. 129, in effect Sept. 1, 1916.*)

§ 197. **Degrees.**—No degree in dentistry shall be conferred in this state except the degree of doctor of dental surgery. Said degree shall not be conferred upon any one unless he shall after January first, nineteen hundred and twenty-one, have satisfactorily completed a course of at least four years in a registered dental school, and prior to that date a course of at least three years, or having been graduated in course from a registered medical school with the degree of doctor of medicine shall have pursued satisfactorily thereafter a course of special study of dentistry for at least two years in a registered dental school; nor shall said degree be conferred upon any one matriculating after January first, nineteen hundred and sixteen, unless prior to matriculation in the institution conferring this professional education, he shall have filed a regents' certificate that he had the minimum education required by the regents; provided, further, however, that the regents may confer upon all persons who shall have received the degree of master of dental surgery under the laws of this state, prior to March twenty-eighth, nineteen hundred and one, the degree of doctor of dental surgery in lieu of said master's degree. (*Amended by L. 1916, ch. 129, in effect Sept. 1, 1916.*)

§ 198. **Licenses.**—1. On certification by the board of dental examiners that a candidate has successfully passed its examinations and is competent to practice dentistry, the regents shall issue to him their license so to practice pursuant to the rules established by them. On the recommendation of the board, the regents may also, without the examination hereinbefore provided for, issue their license to any applicant therefor who shall furnish proof satisfactory to them that he has been duly graduated from a registered dental school and has been thereafter lawfully and reputably engaged in such practice for six years next preceding his application; or who holds a license to practice dentistry in any other state of the United States granted by a state board of dental examiners, indorsed by the dental society of the state of New York, provided, that in either case his preliminary and professional education shall have been not less than required in this state. Every license so issued shall state on its face the grounds on which it is granted and the applicant may be required to furnish his proof on affidavit.

2. Upon recommendation of the board, the regents may issue a permit to graduates from the dental colleges of this state to be employed in registered dental dispensaries, infirmaries and public institutions while under the direction or supervision of a licensed dentist in the interim between graduation and one year thereafter. This permit may be revoked for cause. No such permit shall be issued except such graduate has definite offer of a position in such dental dispensaries, infirmaries or public institutions. (*Amended by L. 1916, ch. 129, in effect Sept. 1, 1916.*)

§ 199.—1. Registration. Every person practicing dentistry in this state and not lawfully registered before April seventeenth, eighteen hundred and ninety-six, shall register in the office of the clerk of the county where his place of business is located, in a book kept by the clerk for such purpose, his name, age, office and post-office address, date and number of his license to practice dentistry and the date of such registration, which registration he shall be entitled to make only upon showing to the county clerk his license or a duly authenticated copy thereof, and making an affidavit stating name, age, birthplace, the number of his license and the date of its issue; that he is the identical person named in the license; that before receiving the same he complied with all the preliminary requirements of this article and the rules of the regents and board as to the terms and the amount of study and examination; that no money, other than the fees prescribed by this article and said rules, was paid directly or indirectly for such license; and that no fraud, misrepresentation or mistake in a material regard was employed or occurred in order that such license should be conferred. The county clerk shall preserve such affidavit in a bound volume and shall issue to every licentiate duly registering and making such affidavit, a certificate of registration in his county, which shall include a transcript of the registration. Such transcript and the license may be offered as presumptive evidence in all courts of the facts stated therein. The county clerk's fee for taking such registration and affidavit and issuing such certificate, shall be one dollar. Any person who having lawfully registered as aforesaid shall thereafter change his name in any lawful manner shall register the new name with marginal note of the former name; and shall note upon the margin of the former registration the fact of such change and a cross reference to the new registration. A county clerk who knowingly shall make or suffer to be made upon the book of registry of dentists kept in his office any other entry than is provided for in this article shall be liable to a penalty of fifty dollars to be recovered by the State Dental Society in a suit in any court having jurisdiction.

2. A county clerk having properly issued a certificate of registration to a licensed dentist, shall forward a duly attested copy of the same, and a copy of the affidavit and evidence upon which said certificate was issued, to the secretary of the board within thirty days of such initial registration of a duly licensed dentist. On or before the first of May of each year the secretary of the board shall mail to every dentist registered in the state of New York a blank application for re-registration, addressing the same in accordance with the post-office address given at the last previous registration. Upon receipt of such application blank, which shall contain space for the insertion of his name, office and post-office address, date and number of his license, and such other information as the regents deem necessary; and he shall sign and swear to the accuracy of the same before a notary public, after which he shall forward this sworn statement and application for renewal of his registration certificate to the secretary of the

board together with the fee of two dollars. Upon receipt of such application and fee, and having verified the accuracy of the same by comparison with the applicant's initial registration statements the secretary of the board shall issue a certificate of registration which shall render the holder thereof a legal practitioner of dentistry for the ensuing year. These certificates of registration shall all bear date of September first of the year of issue, and shall expire on the thirty-first day of August in the year following. Applications for renewal of registration therefore must be made on or before the first day of September of each year, and if not so made an additional fee of one dollar for each thirty days of delay beyond the first day of September and up to the first day of January, shall be added to the regular fee. On the first day of January of each year, or within ten days thereafter, the secretary of the board shall publish and mail to every registered dentist in the state of New York a printed copy of the dental law and a printed list of the legally registered dentists within the state, and each such published list shall contain at the beginning thereof these words: "Each registered dentist receiving this list is requested to report to the secretary of the board the name * and addresses of any dentists known to be practicing dentistry, whose names do not appear in this registry. The names of persons giving such information shall not be divulged." Should any dentist continue to practice dentistry beyond the first day of January, despite the fact that his name does not appear in the registry, he shall be counted as an illegal practitioner, and his license may be suspended or revoked by the regents, in accordance with the provisions of section two hundred and one. All practitioners of dentistry already registered in this state at the time of the passage of this act, shall make application to the secretary of the board for the re-registration blank upon receipt of which he shall, in like manner already described, make application for re-registration, forwarding to the secretary of the board the re-registration blank properly filled in and accompanied by the fee of two dollars. Said application and fee must reach the secretary on or before the first day of December following the adoption of this statute; failing which the delinquent shall be dealt with as outlined in section two hundred and one. (*Amended by L. 1915, ch. 54, and L. 1916, ch. 129, in effect Sept. 1, 1916.*)

§ 200. **Examination fees; expenses.**—Every applicant for license to practice dentistry shall pay a fee of not more than twenty-five dollars. All fees, fines, penalties and other moneys derived from the operation of this article shall be applied by the regents in the payment of all proper expenses incurred by them under its provisions, including the salary and expenses of the secretary of the board, the compensation and expenses of the members of such board, and all other expenses pertaining to the enforcement of the provisions of this article. All expenses of the state dental society incurred by them in the prosecution of illegal practitioners of dentistry shall be paid

* So in original.

out of the first year's receipts, upon the indorsement of the auditing committee of the state dental society. (*Amended by L. 1916, ch. 129, in effect Sept. 1, 1916.*)

§ 201. **Revocation of licenses.**—1. If any practitioner of dentistry should fail to register in time for the appearance of his name in the published list of registered dentists, in accordance with the provisions of section one hundred and ninety-nine the regents shall notify said delinquent to appear before them at an appointed time and place, and if his explanation of his failure to have registered shall be satisfactory to the regents, he may be reinstated and his name added to the registry; and the regents may also at their option remit the additional fees accruing because of delay in registering. But should the delinquent's explanation prove unsatisfactory, the regents may suspend the person from the practice of dentistry for a limited season; or the regents may revoke the person's license.

2. If any practitioner of dentistry be charged under oath before the board, with unprofessional or immoral conduct, or with gross ignorance, or inefficiency in his profession, or with fraud or deceit in procuring admission to practice, the board shall notify him to appear before a committee of three of the board at an appointed time and place, with counsel, if he so desires, to answer said charges, furnishing to him a copy thereof. Upon the report of the board to the regents that the accused has been guilty of unprofessional or immoral conduct, or that he is grossly ignorant or inefficient in his profession, or of fraud or deceit in procuring admission to practice, the regents may, without further hearing, suspend the person so charged from the practice of dentistry for a limited season, or may revoke his license. Upon the revocation of any license, the fact shall be noted upon the records of the regents and the license shall be marked as canceled, of the date of its revocation. Upon presentation of a certificate of such cancellation to the clerk of any county wherein the licentiate may be registered, said clerk shall note the date of the cancellation on the register of dentists and cancel the registration. A conviction of felony shall forfeit a license to practice dentistry, and upon presentation to the regents or a county clerk by any public officer or officer of a dental society of a certified copy of a court record showing that a practitioner of dentistry has been convicted of felony, that fact shall be noted on the record of license and clerk's register, and the license and registration shall be marked "canceled." Any person who, after conviction of a felony shall practice dentistry in this state, shall be subject to all the penalties prescribed for the unlicensed practice of dentistry, providing that if such conviction be subsequently reversed upon appeal and the accused acquitted or discharged, his license shall become again operative from the date of such acquittal or discharge. (*Amended by L. 1916, ch. 129, in effect Sept. 1, 1916.*)

§ 202. **Construction of this article.**—This article shall not be construed to prohibit an unlicensed person from performing merely mechanical work

upon inert matter in a dental office or laboratory; or a student in an incorporated dental school or college, registered by the regents, from performing operations for purposes of clinical study under the supervision and instruction of preceptors; or a duly licensed physician from treating diseases of the mouth or performing operations in oral surgery. But nothing in this article shall be construed to permit the performance of independent dental operations by an unlicensed person under cover of the name of a registered practitioner or in his office. (*Amended by L. 1916, ch. 129, in effect. Sept. 1, 1916.*)

§ 203. Penalties and their collection.—A. A person who, in any county of this state, practices dentistry, not being at the time of said practice a dentist licensed to practice as such in this state and registered in the office of the clerk of such county, pursuant to the general laws regulating the practice of dentistry, is guilty of a misdemeanor and punishable upon conviction of a first offense by a fine of not less than fifty dollars, and upon conviction of a subsequent offense by a fine not less than one hundred dollars, or by imprisonment for not less than two months, or by both such fine and imprisonment. Any violation of this section by a person theretofore convicted under the then existing laws of this state of practicing dentistry without license or registration, shall be included in the term “a subsequent offense.” Every conviction of unlawful practice subsequent to a first conviction thereof shall be a conviction of a second offense. Every practitioner of dentistry must display conspicuously upon the house or in the dental office wherein he practices, his full name. If there are more dental chairs than one in any dental office the name of the practitioner practicing at each chair must be displayed conspicuously on or by said chair in plain sight of the patient. Any person who shall practice dentistry personally or by hiring or procuring another to practice and shall fail so to display or cause to be displayed the name, license and registration certificate of himself and any person practicing or employed to practice as a dentist or dental hygienist in his dental office or any dental office under his control, shall be guilty of a misdemeanor and punishable upon a first conviction by a fine of not less than fifty dollars or more than five hundred dollars or by imprisonment for not more than one year, and upon every subsequent conviction by a fine of not less than one hundred dollars, or by imprisonment for not less than sixty days, or by both fine and imprisonment. Any person who shall employ, hire, procure, or induce one who is not duly licensed and registered as a dentist to practice dentistry, or shall aid or abet one not so licensed and registered in such practice shall be guilty of a misdemeanor and punishable by a fine of not less than fifty dollars or more than five hundred dollars, or by imprisonment for not more than a year, or by both such fine and imprisonment; providing that a person practiced upon by an unlicensed or unregistered dentist shall not be deemed an accomplice, employer, hirer, procurer, inducer, aider, or abettor within the meaning of this section.

B. A person shall be deemed guilty of a misdemeanor, and upon every conviction thereof shall be punished by a fine or not less than two hundred and fifty dollars, or by imprisonment for not less than six months, or by both fine and imprisonment, who

1. Shall sell or barter or offer to sell or barter, or, not being lawfully authorized so to do, shall issue or confer or offer to issue or confer any dental degree, license or any diploma or document conferring or purporting to confer any dental degree or license or any certificate or transcript made or purporting to be made pursuant to the laws regulating the license and registration of dentists; or

2. Shall purchase or procure by barter any diploma, certificate or transcript, with intent that the same shall be used as evidence of the qualifications to practice dentistry of any person other than the one upon or to whom it was lawfully conferred or issued or in fraud of the laws regulating such practice; or,

3. Shall use or attempt to use any diploma, certificate or transcript which has been purchased, fraudulently issued, counterfeited or materially altered either as a license or color of license to practice dentistry or in order to procure registration as a dentist; or,

4. Shall practice dentistry under a false or assumed name or under the license of registration of another person of the same name or under the name of a corporation, company, association, parlor or trade name; provided that legally incorporated dental corporations existing and in operation prior to January first, nineteen hundred and sixteen, may continue so operating while conforming to the provisions of this act. Their advertising subject to the rules of the regents, and employees of said corporations shall be licensed and registered dentists, and corporations that cease to exist or operate for any reason whatsoever shall not be permitted to resume operation; or,

5. Shall assume the degree of bachelor of dental surgery, doctor of dental surgery, or master of dental surgery, or shall append the letters B.D.S., D.D.S., M.D.S., D.M.D., to his name, or make use of the same or shall prefix to his name the title doctor or any abbreviation thereof, not having had duly conferred upon him by diploma from some college, school or board of examiners legally empowered to confer the same, the right to assume said titles; or shall assume any title or append or prefix any letters to his name with the intent to represent falsely that he has received a medical or dental degree or license; or shall represent that, not having been licensed to practice dentistry under the laws of this state, he is entitled so to practice; provided that any licentiate may use the prefix to his name of "doctor" or "Dr."; or,

6. Shall falsely personate another at any examination held by the regents or by the board, of the preliminary or professional education of candidates for dental students' certificates, dental degrees or licenses, or who shall induce another to make or aid and abet in the making of such false

L. 1916, ch. 505.

Veterinary medicine.

§§ 203, 219.

personation, or who shall knowingly avail himself of the benefit of such false personation, or who shall knowingly or negligently make or induce another to make falsely any certificate required by the regents or board in connection with their examinations.

C. Any person who in any affidavit or examination required of an applicant for examination, license or registration under the laws regulating the practice of dentistry, or under the laws, ordinances or regulation governing the regents' examinations of the preliminary education required for a dental student's certificate shall make wilfully a false statement in a material regard shall be guilty of perjury, and punishable upon conviction thereof by imprisonment not exceeding ten years.

D. All courts of special sessions and police justices sitting as courts of special sessions shall have jurisdiction in the first instance to hear and determine all charges of misdemeanors mentioned in this article committed within their local jurisdiction, and to impose all the penalties provided for such misdemeanors; a judgment that the defendant pay a fine shall also direct that he be imprisoned until the fine be paid, specifying the extent of the imprisonment, which cannot exceed one day for every dollar of the fine imposed; provided, however, that the power of said courts and justices to hear and determine such charges shall be divested, if before the commencement of a trial before such court of justice, a grand jury shall present an indictment against the accused person for the same offense, or if a justice of the supreme court or a county judge of the county shall grant a certificate in the manner provided by law in cases of misdemeanor, that it is reasonable that such charge be prosecuted by indictment. Any misdemeanor mentioned in this article for which a punishment is not specifically imposed shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or by both fine and imprisonment. All prosecutions under this act shall be by the attorney-general in the name of the people of the state and all fines may be paid to the board or sued for and recovered in the name of the people of the state in an action brought therefor by the attorney-general.

E. All violations of this act when reported to the regents and duly substantiated by affidavits or other satisfactory evidence shall be investigated and if the report is found to be true and the evidence substantiated the regents shall report such violations to the attorney-general and request prompt prosecution. The regents may appoint such inspectors as are necessary to be paid from the funds received under this act at such salaries as they may determine for the purpose of the investigation of such violations. (*Amended by L. 1916, ch. 129, in effect Sept. 1, 1916.*)

§ 219. **Licenses.**—On receiving from the state board an official report that an applicant has successfully passed the examination and is recommended for license, the regents shall issue to him, if in their judgment he is duly qualified therefor, a license to practice veterinary medicine. Every license shall be issued by the university under seal and shall be signed by

each acting veterinary medical examiner of the board and by the officer of the university who approved the credential which admitted the candidate to examination, and shall state that the licensee has given satisfactory evidence of fitness as to age, character, preliminary and veterinary medical education and all other matters required by law, and that after full examination he has been found duly qualified to practice. Applicants examined and licensed before July first, eighteen hundred and ninety-seven, by other state examining boards registered by the regents as maintaining standards not lower than those provided by this article, and applicants who matriculated in a New York state veterinary medical school before July first, eighteen hundred and ninety-six, and who received the veterinary degree from a registered veterinary medical school before July first, eighteen hundred and ninety-seven, may without further examination, on payment of ten dollars to the regents, and on submitting such evidence as they may require, receive from them an indorsement of their license or diplomas conferring all rights and privileges of a regents' license issued after examination. If any person, whose registration is not legal or who is not registered because of some error, misunderstanding or unintentional omission, shall submit to the state board of veterinary medical examiners or the regents of the university of the state of New York, satisfactory proof that he had all requirements prescribed by law at the time required for registration and was entitled to be legally registered, he may, on unanimous recommendation of the state board of veterinary medical examiners, or by action of the board of regents, receive from the regents under seal a certificate of the facts which may be registered by any county clerk and shall make valid the previous imperfect registration, and such certificate shall include the date on which such person could or should have registered, and his registration shall be deemed to have been valid and corrected from that date. And any veterinary practitioner in any county of this state who was registered in the county clerk's office between July first, eighteen hundred and ninety-five, and July first, nineteen hundred and fifteen, may, upon satisfactory evidence of such registration and of qualification to practice, and upon written application, receive from the board of regents a certificate of facts which may be registered in the office of the county clerk where such practitioner was registered, and thus make valid his previous imperfect registration. Before any license is issued it shall be numbered and recorded in a book kept in the regents' office and its number shall be noted in the license. This record shall be open to public inspection, and in all legal proceedings shall have the same weight as evidence that is given to a record of conveyance of land. (*Amended by L. 1912, ch. 178, and L. 1916, ch. 505, in effect May 10, 1916.*)

§ 231. State board of pharmacy; appointments; examinations; examiners; secretary; expenses.

Constitutionality.—The statute requiring the annual registration of persons engaged in the practice of pharmacy and imposing a penalty for practicing said

profession without a license, does not impair the right of a pharmacist to pursue his occupation and is valid, being a lawful exercise of the police power. *People v. Roemer* (1915), 168 App. Div. 377, 153 N. Y. Supp. 323.

§ 233. **Licenses; certificates; examinations; rules.**—Satisfactory evidence verified by oath shall be required by the regents of all candidates for admission to the examinations.

Pharmacist. They shall admit to the examination for pharmacist any candidate that pays a fee of ten dollars and

1. Is more than twenty-one years of age.
2. Is of good moral character.
3. Had prior to January first, nineteen hundred and eighteen, fifteen academic counts, or the equivalent, before beginning the first year of study in the school, and after that date had thirty academic counts, or the equivalent, before beginning such study.
4. Had studied pharmacology as outlined in the syllabus not less than two years in a school.
5. Has either received the diploma of graduate in pharmacy or equivalent degree from a school, or a license conferring the full right to practice pharmacology in some foreign country registered as meeting the minimum requirements of this article. The diploma of graduate in pharmacy or equivalent degree shall not be conferred on any one that did not file with the school at matriculation the pharmacy student certificate required above.
6. Has had four years' experience in a registered pharmacy or drug store, under the personal supervision of a pharmacist or druggist, one year of which experience within five years of the date of application must have been in a pharmacy or drug store of the United States.

Druggist. They shall admit to the examination for druggist any candidate that pays a fee of five dollars and

1. Is more than eighteen years of age.
2. Is of good moral character.
3. Has the preliminary and professional education required by the rules.
4. Has had three years' experience in a registered pharmacy or drug store under the personal supervision of a pharmacist or druggist, one year of which experience within five years of the date of application must have been in a pharmacy or drug store of the United States.

Examinations. The board shall submit to the regents as required suitable questions for thorough examination in pharmacology, both written and practical, as outlined in the syllabus.

From these questions the secretary shall prepare question papers in accordance with the rules which at any examination shall be the same for all candidates. Examinations for license shall be given in at least three convenient places in the state and at least four times annually in accordance with the rules. The practical examinations shall be conducted by the examiners, the written by the regents. On receiving from the board an

official report that an applicant has successfully passed the examinations and is recommended for license, the regents shall issue to him a license to practice according to the qualifications of the applicant. Every license shall be issued by the regents under seal and shall be signed by the commissioner, each examiner and by the secretary. Every certificate shall be issued by the board subject to rule and shall be signed by the secretary. Applicants examined and licensed by other state examining boards registered by the regents as maintaining standards not lower than those provided by this article may without further examination, on payment of twenty-five dollars to the regents and on submitting such evidence as they may require receive from them an endorsement of their licenses or diplomas conferring all rights and privileges of a regents' license after examination.

Before any license or certificate is issued it shall be numbered and properly recorded, and its number shall be noted in the license or certificate. The regents on the recommendation of the board may revoke a license or annul a certificate, for cause.

Rules. The rules of the board and of the regents affecting examination, registration and administration continue in force until revised by the board and approved by the regents.

The board shall make rules subject to the approval of the regents:

1. For the certification and registration of apprentices and storekeepers.
2. For the surrendering of licenses, issued prior to January first, nineteen hundred and one.
3. For the acceptance of licenses from other licensing boards issued prior to January, nineteen hundred and five, in lieu of a diploma.
4. For the accomplishment of the trusts reposed in them by this article and by any other law of the state.

All licenses and certificates of examination, issued to licensees by former boards of pharmacy, shall be in full force and effect in perpetuity for the section of the state for which they were issued, and all certificates of registration issued during nineteen hundred and ten shall be valid until January first, nineteen hundred and eleven. (*Amended by L. 1910, ch. 422, L. 1915, ch. 502, and L. 1916, ch. 327, in effect Apr. 27, 1916.*)

§ 234. Pharmacies; drug stores; stores.

Constitutionality.—The provision allowing storekeepers who are not pharmacists, in places of 1,000 inhabitants or less that do not have within three miles a pharmacy or drug store, to sell medicines and poisons for a period of one year upon the payment of a certain fee is constitutional, being designed to further the needs of persons dwelling in sparsely settled districts where licensed pharmacists may not be available. *People v. Roemer* (1915), 168 App. Div. 377, 153 N. Y. Supp. 323.

Storekeepers are not authorized to practice pharmacy by this section, for they are not given authority to compound medicines, but only to sell those put up in original packages by licensed pharmacists. *People v. Roemer* (1915), 168 App. Div. 377, 153 N. Y. Supp. 323.

L. 1916, ch. 291.

Tuberculosis hospitals.

§§ 238, 248, 295, 319.

§ 238. Poison schedules; register; opium and other prescriptions.

Sale of heroin to minor; right of parent to recover for loss of services; punitive damages.—A mother, entitled to the services of a minor son, may recover in an action against druggists who sold to her son a poisonous drug known as heroin, where it appears that as the result of the sales the son became an habitual user of the drug and a physical, mental and moral wreck, unable to perform any labor, so that she was deprived of his services. Where it appeared that the defendants ignored the provision of this section, forbidding them to sell the drug without affixing to each package a label containing the name of the article and the word *poison*, and unmindful of the consequences sold heroin to the plaintiff's son for several months in large quantities, amounting on one occasion to 1,000 pills in a week, there was such reckless disregard of the rights of others that punitive as well as compensatory damages may be awarded. *Tidd v. Skinner* (1916), 171 App. Div. 98, 156 N. Y. Supp. 885.

§ 248. Physicians, et cetera, to keep records.

Writing prescription.—Where a physician merely writes a prescription for a dangerous drug but does not deliver it to his patient, he is not guilty of a violation of section 248 of the Public Health Law which requires a physician to "keep on record the name and address of each person to whom such drug is dispensed." *People v. Cohen* (1916), 94 Misc. 355, 157 N. Y. Supp. 591.

§ 295. License to practice as undertaker.

Constitutionality.—The provision of this section, as amended by chapter 71 of the Laws of 1913, that all applicants for a license to conduct the business of undertaking, not involving the embalming of dead bodies, must, after June 1, 1915, present proof that they have served as an apprentice to an undertaker for at least two years in the aggregate, is unreasonable in that it requires that the requisite skill and knowledge shall be obtained in a particular manner and is unconstitutional. Since all provisions of this section are connected and dependent upon one another and were designed to accomplish the purpose of requiring all engaging in business as undertakers to procure licenses, the entire section must be held to be unconstitutional. *It seems*, that the knowledge essential to qualify one to enter an examination for a license as an undertaker may be acquired in a medical or other school for such purpose or by special training and observation without actually serving as an apprentice. The statute in its present form is subject to the criticism that it is aimed at the undertaking business rather than at those conducting funerals, for it does not require that funerals shall be conducted under the immediate supervision of a licensed undertaker and plainly contemplates that they may be conducted by his employees who are not even registered apprentices, except in the case of funerals of those dying of a communicable disease. *People v. Harrison* (1915), 170 App. Div. 802, 156 N. Y. Supp. 769.

§ 319. Consents requisite to the establishment of hospitals or camps for the treatment of pulmonary tuberculosis.—A hospital, camp or other establishment for the treatment of patients suffering from the disease known as pulmonary tuberculosis, shall not be established in any town by any person, association, corporation or municipality except when authorized as provided by this section. The person, association, corporation or municipality proposing to establish such a hospital, camp or other establishment shall file with the state commissioner of health a petition describing the character thereof, stating the county and town in which it is to be located

and describing the site in such town for such proposed hospital, camp or other establishment, and requesting the commissioner to fix a date and place for a hearing on such petition before the state commissioner of health and the local health officer, who shall constitute a board to approve or disapprove the establishment of such hospital, camp or other establishment in accordance with such petition. The state commissioner of health shall fix a date and place for a hearing on such petition, which date shall be not less than thirty nor more than forty days after the receipt thereof. A notice of such hearing specifying the date and place thereof and briefly describing the proposed site for such hospital, camp or other establishment shall be mailed to the person, association, corporation or municipality proposing to establish the same and to the health officer and each member of the board of health of the town in which it is proposed to establish such hospital, camp or other establishment at least twenty days before the hearing, and also published twice in a local newspaper of the town, or if there is no such paper published therein, then in the newspapers of the county designated in pursuance of law to publish the session laws. At the time and place fixed for such hearing the state commissioner of health, or his deputy when designated by the commissioner, and the local health officer shall hear the petitioner and any person who desires to be heard in reference to the location of such hospital, camp or other establishment, and they shall within thirty days after the hearing, if they are able to agree, approve or disapprove of the location thereof and shall notify the person, association, corporation or municipality of their determination. The determination of the state commissioner of health, or his deputy as the case may be, and the local health officer shall be final and conclusive; but if within thirty days after the hearing they are unable to agree, they shall within such thirty days notify the person, association, corporation or municipality proposing to establish such hospital, camp or other establishment that they are unable to agree. Within ten days after the receipt of such notice, such person, association, corporation or municipality may file in the office of the state commissioner of health a request that the petition be referred to a board consisting of the lieutenant-governor, the speaker of the assembly and the state commissioner of health. Such officers shall approve or disapprove of the proposed location of such hospital, camp or other establishment after a hearing of which notice shall be mailed to the person, association, corporation or municipality proposing to establish the same and to the health officer and to each member of the local board of health of the town, or without a hearing, upon the evidence, papers and documents filed with the state commissioner of health or that may be submitted to them, as the board shall determine. They shall make their determination within thirty days after the request for such submission has been filed in the office of the state commissioner of health and cause a copy thereof to be mailed to the person, association, corporation or municipality proposing to establish such hospital, camp or other establishment and to the

L. 1916, ch. 370.

Reports of tuberculosis.

§ 320.

health officer of the town in which it is proposed to establish the same. Such determination shall be final and conclusive. (*Amended by L. 1909, ch. 171, and L. 1916, ch. 291, in effect Apr. 24, 1916.*)

Notice of hearing; State Commissioner of Health necessary member of board to approve or disapprove establishment of such hospital.—Under the provisions of the Public Health Law for the establishment of county hospitals for the care and treatment of persons suffering from tuberculosis a special notice should be given to each member of the board of health of the town and the health officer at least twenty days before the date fixed for the hearing, and a general notice to all of the people of the town by publication. The State Commissioner of Health has no authority to delegate his powers to act as a member of the board to a deputy or any other person, and a board of which the Commissioner is not a member has no jurisdiction. A deputy appointed under the provisions of chapter 559 of the Laws of 1913, who is to "perform such duties as may be prescribed by the Commissioner," is not and cannot be authorized to perform the duties of this specially-constituted board, nor is the Commissioner authorized to make his assistant a member of the board. Such a board has no jurisdiction where one member of the town board of health has not been given a written notice at least twenty days before the hearing. This is true, although said member declared that he did not care to be served and was not interested in the matter. *People ex rel. Buckbee v. Biggs* (1916), 171 App. Div. 373, 156 N. Y. Supp. 1038.

§ 320. Reports of tuberculosis by physicians and others.—Tuberculosis is hereby declared to be an infectious and communicable disease, dangerous to the public health. It shall be the duty of every physician in the state of New York, to report by telephone or in person or in writing on a form to be furnished as hereinafter provided, the name and address, of every person known by said physician to have tuberculosis, to the health officer of the city, town or village in which said person resides or may be, within twenty-four hours after such fact comes to the knowledge of said physician. It shall also be the duty of the chief officer having charge for the time being of any hospital, dispensary, asylum or other similar private or public institution to report the name, age, sex, color, occupation, place where last employed if known and the previous address of every patient having tuberculosis who comes into his care or under his observation, within twenty-four hours thereafter to the health officer of the city, town or village in which said patient resided immediately previous to admission to said institution; except that if such residence be outside of the state of New York then such report shall be made to the state commissioner of health.

Any physician, nurse, employer, teacher, head of a family, landlord, or other person may report in writing the name and address of any person coming under his observation who appears to be suffering from tuberculosis to the health officer of the city, town or village in which such person is, and the health officer shall thereupon take such steps as may be prescribed by the sanitary code provided the person making such report signs his own name and address thereon.

Each registrar of vital statistics shall promptly report to the health officer the name and address of every person reported to him as having

§§ 336, 337, 392.

Cold storage; penalties.

L. 1916, ch. 58.

died from tuberculosis. The health officer shall ascertain whether such person has been previously reported as having tuberculosis by the physician signing the death certificate, and if it appears that such physician has not so reported such person, the health officer shall call the attention of such physician to the provisions of this section. In case of repeated violations of the provisions of this section by any physician the health officer shall report such repeated violations to the board of health or other local health authorities, who shall cause such steps to be taken as may be necessary to enforce the penalty provided for such violation. (*Amended by L. 1913, ch. 559, and L. 1914, ch. 318, and L. 1916, ch. 370, in effect May 1, 1916.*)

§ 336. Cold storage food to be marked.

Purchaser chargeable with knowledge of date of receipt or renewal of articles of food.—Since this section, as amended by chapter 414 of the Laws of 1914, requires that all articles of food placed in cold storage, or the packages in which they are contained, shall be plainly marked with the day of receipt and with the date of removal, and since the rules of the State Board of Health prohibit the obliteration of any such marks, a purchaser of articles which have been in cold storage is chargeable with knowledge of the date of their receipt or removal. *People v. Finkelstein* (1915), 167 App. Div. 591, 152 N. Y. Supp. 875.

§ 337. Time that cold storage food may be kept.

Constitutionality.—This section, as amended by chapter 414 of the Laws of 1914, is a valid exercise of the police power, designed to protect the health of the community. *People v. Finkelstein* (1915), 167 App. Div. 591, 152 N. Y. Supp. 875.

Construction.—Said statute should be so construed that food products may not be kept in cold storage in the aggregate longer than the time prescribed, whether that time shall be spent in one or more than one warehouse, or the products shall have been placed in storage by one or more than one owner. Hence, warehousemen who keep the goods in storage after the expiration of the prescribed period from the date of the first storage, or persons who place the goods in storage after the limit has been exhausted, or who having placed them in storage before the expiration of such time limit shall keep them beyond it, are guilty of a violation of the statute. *People v. Finkelstein* (1915), 167 App. Div. 591, 152 N. Y. Supp. 875.

Amendment making it unlawful to keep food in cold storage warehouse for a longer period than ten months is not retroactive, and hence it does not apply to food in cold storage when the amendment took effect. *People v. Wendel* (1916), 217 N. Y. 260, revg. — App. Div. —, 155 N. Y. Supp. 1132.

Prosecution; evidence, reports of inspectors.—Upon the prosecution a defendant for a violation of the provisions of the Public Health Law, in that he kept goods in cold storage beyond the time limited by the statute, the written reports of the inspectors are admissible in evidence. *People v. Finkelstein* (1915), 167 App. Div. 591, 152 N. Y. Supp. 875.

§ 392. Penalties.—Any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, shall inter, cremate, or otherwise finally dispose of the dead body of a human being, or permit the same to be done, or shall remove said body from the primary registration district in which the death occurred or the

body was found, without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred, or in which the body was found; or shall refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record, required by this article; or shall wilfully alter, otherwise than is provided by this article, or shall falsify any certificate of birth or death, or any record established by this article; or being required by this article to fill out a certificate of death and file the same with the local registrar, or deliver it, upon request, to any person charged with the duty of filing the same, shall fail, neglect or refuse to perform such duty in the manner required by this article; or being a registrar, deputy registrar, or subregistrar, shall fail, neglect or refuse to perform his duty as required by this article and by the instructions and direction of the state commissioner of health thereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined not less than five dollars nor more than fifty dollars and for each subsequent offense not less than ten dollars, or more than one hundred dollars or be imprisoned in the county jail not more than sixty days, or be both fined and imprisoned in the discretion of the court. Whenever any physician, midwife, or other person shall fail or neglect to properly record and file a certificate of birth as required by this article such person shall be liable to a penalty of not less than five dollars nor more than fifty dollars for the first and second offenses, which penalty may be recovered by an action brought by the state commissioner of health in any court of competent jurisdiction, and for every subsequent offense, such person shall be guilty of a misdemeanor, punishable by a fine of not less than ten nor more than one hundred dollars, or by imprisonment for not more than sixty days, or both. (*Added by L. 1913, ch. 619, and amended by L. 1916, ch. 58, in effect Mch. 20, 1916.*)

ARTICLE XXI.

COUNTY MOSQUITO EXTERMINATION COMMISSION.

(Article added by L. 1916, ch. 408, in effect May 3, 1916.)

- Section 400. Establishment; appointment of commissioners.
- 401. Chairman of board of supervisors ex officio member.
 - 402. State commission * of health to appoint one member of such commission.
 - 403. Members to serve without compensation.
 - 404. Commissions; terms of office.
 - 405. Official oath; officers.
 - 406. Commission a body corporate; powers.
 - 407. Secretary of commission; salary.
 - 408. Clerks and assistants.
 - 409. Duties of clerks and assistants.

* So in original.

- 409-a. Accumulation of water a nuisance.
- 410. Powers and duties of commission.
- 411. Publication of notice of entry, claims, damages and payments.
- 412. Estimate of annual requirements; powers and duty of state health commissioner.
- 413. Duties of boards of supervisors.
- 414. Disbursements by county treasurer.
- 415. Annual report.
- 416. Reservation of powers.
- 417. Temporary provision for nineteen hundred and sixteen.
- 418. Obstructions; interferences.

§ 400. **Establishment; appointment of commissioners.**—In any county of the state of New York, having a population of less than two hundred thousand adjacent to a city of the first class, having a population of over three million there is hereby created an appointing board to consist of the county judge, the county clerk and the county comptroller, to be known as “The (here shall be inserted the name of the county in and for which such appointing board shall act) County Board” for the appointment of a county mosquito extermination commission, as hereinafter provided. The members of such appointing board shall serve without pay, except that the necessary expenses of each member for actual attendance at any meeting of such board shall be allowed and paid. Within ten days after the presentation of a petition signed and acknowledged in the same manner as are deeds entitled to be recorded, by two hundred residents of such county, it shall be the duty of the county judge to convene the said board, at the most suitable and convenient place, or otherwise arrange for concerted action, for the appointment of four resident taxpayers in any such county, who, with the chairman of the board of supervisors and one member, to be appointed by the state commissioner of health, as provided by sections four hundred and one and four hundred and two of this article, shall constitute a board of commissioners to be known as “The (here shall be inserted the name of the county in and for which the commissioners are to be appointed) County Extermination Commission.” (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 401. **Chairman of board of supervisors ex officio member.**—The chairman of the board of supervisors of each county in and for which a commission is appointed, shall be a member ex officio of such commission, and shall serve without compensation, except that the necessary expenses actually incurred by his attendance upon meetings of such commission shall be allowed and paid. He shall have equal powers, privileges and duties with the other members of such commission. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 402. **The state commissioner of health to appoint one member of such commission.**—The state commissioner of health shall appoint one member of such commission who shall have equal powers, privileges and duties with

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the other members of such commission. Such member shall be a resident of the county for which such commissioners are appointed, and he shall in addition to his powers, duties and privileges conferred, represent the state commissioner of health in all matters as the state commissioner of health may direct. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 403. **Members to serve without compensation.**—The members of such commission shall serve without compensation, except that the necessary expenses of each commissioner for actual attendance at meetings of such commission shall be allowed and paid. No person employed by such commission shall be a member thereof. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 404. **Commissions; terms of office.**—The commissioners first appointed by the county board in any district under the provisions of this article shall hold office respectively for the term of one, two, three and four years. The term of the member appointed by the state commissioner of health shall be four years. All such commissioners after the first appointment shall be appointed for the full term of four years. Vacancies in such commission, occurring by resignation or otherwise, shall be filled by the county board in the manner provided in section four hundred except any vacancy caused by resignation or otherwise of the member appointed by the state commissioner of health, which shall be filled by the state commissioner of health in the manner provided in section four hundred and two of this article, and the persons so appointed to fill such vacancies shall be appointed for the unexpired term only. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 405. **Official oath; officers.**—Before entering upon the duties of his office each commissioner shall take and subscribe an oath or affirmation before the clerk of the county in which is situated the district in and for which he is appointed to faithfully and impartially perform the duties of his office, which oath or affirmation shall be filed with such clerk. Every such commission shall annually choose from among its members a president and treasurer, who shall serve without pay, and they shall respectively perform the duties ordinarily incidental to such offices. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 406. **Commission a body corporate and politic; powers.**—From and after the appointment, qualification and organization of such commissioners, such mosquito extermination commission shall become and be a body corporate and politic, under the name given in such petition, and by such name and style may sue, be sued, execute contracts, have a corporate seal, and shall have all powers herein conferred upon it within the counties wherein it is appointed. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 407. **Secretary of commission; salary.**—The commission may appoint a secretary, whose compensation shall be fixed by such commission; the salary

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of such secretary shall not exceed, however, the sum of eighteen hundred dollars per annum. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 408. **Clerks and assistants.**—Said commission may, with the approval of the board of supervisors of the county, appoint and employ such clerks, assistants, inspectors and day laborers as may be necessary to carry out the provisions of this article. The compensation of such clerks and assistants shall be fixed by the board of supervisors of the county. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 409. **Duties of clerks and assistants.**—The commission shall prescribe the duties and hours of employment of clerks and assistants and make all rules and regulations respecting the same. The commission shall furnish them with necessary and proper facilities. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 409-a. **Accumulation of water a nuisance.**—Any accumulation of water in which mosquitos are breeding, or are likely to breed, is hereby declared to be a nuisance. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 410. **Powers and duties of commission.**—Said commission shall use every means feasible and practicable to exterminate mosquitoes, of every variety, found within the county for which such commission is appointed. Such commission shall have power and authority to enter without hindrance upon any or all lands within the county for the purpose of draining or oiling the same and to perform all other acts which in its opinion and judgment may be necessary and proper for the elimination of breeding places of mosquitoes or which will tend to exterminate mosquitoes of fresh water, salt water and every other kind or variety found within such counties. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 411. **Publication of notice of entry, claims, damages and payments.**—Before entering upon any such lands for such purposes as outlined under section four hundred and ten hereof, the commission shall publish each year, at least once during the year, immediately following the approval by the state commissioner of health of its plans for work during the ensuing year as provided in this article, in at least one newspaper in every town of the county where work is to be performed and in which such a paper is published, a general description of the land with the names of the owners thereof as shown by the last assessment-rolls, if known, if the name of the owner or owners be unknown that fact must be stated and published; and in case of a town where work is to be performed by the commission and in which no newspaper is published, individual notices shall be first sent to every owner in such town upon whose land the commission proposes to enter for said purposes if the name of such owner be known, if unknown such notice shall be posted in not less than five conspicuous places in such town. Any person objecting to or who is aggrieved or who claims damages

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due to the execution of the work of the commission, shall file a protest with the commission setting forth his grievance or claim. The commission shall thereupon and within thirty days after the filing of such protest or claim, set a day for a public hearing thereof. In all such cases the decision of the commission as to the necessity of such work shall be final. Any damage claimed by any party on account of entry work of the commission upon his property shall be determined by an action in court to be tried in the county; and the amount of any damage that may be awarded such party shall be included in the next succeeding estimate of annual requirements of the commission and shall be included in the annual tax levy as provided for in this article, and be paid by the commission. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 412. **Estimate of annual requirements; power and duty of state health commissioner.**—Every such county commission shall, on or before the first day of September in each year, file with the state commissioner of health a detailed estimate of the moneys required for the ensuing year and a plan of the work to be done and the methods to be employed, together with a general description of such lands with the names of the owners thereof, as recorded by the last assessment-rolls if known, if unknown that fact shall be stated, as the commission proposes to enter upon and to execute such plans and work. Such commissioner shall have the power to approve, modify or alter such estimates, plans and methods, and such estimates, plans and methods finally approved by him shall be forwarded by him to the board of supervisors in the county on or before the first day of October following its receipt. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 413. **Duties of boards of supervisors.**—It shall be the duty of the board of supervisors in every county in which a commission is appointed as* its annual or other meeting in the month of December of each year and on receipt of the said report from the commissioner of the state board of health, to cause to be included in the annual tax levy of such county and added to the tax roll for the succeeding year such amount of money for the use and purposes of the mosquito extermination commission, in its said county, as is approved by the state commission of health in such report, provided, however, that in no one year shall the amount so raised exceed the amount hereinafter specified, to wit: in counties where the assessed valuations are not more than forty million dollars, a sum not greater than one mill on every dollar of assessed valuation; in counties where the assessed valuations are in excess of forty million dollars, a sum not greater than three-eighths of one mill on every dollar of assessed valuations. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 414. **Disbursements by county treasurer.**—The county treasurer of each county shall pay from time to time to the mosquito extermination com-

* So in original.

mission, on the requisition of such commission, duly signed and approved by the president and secretary thereof, the amount of moneys so specified in the annual tax levy for the purposes and uses of such mosquito extermination commission. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 415. **Annual report.**—It shall be the duty of each mosquito extermination commission, on or before the first day of September in each year, to submit to the state commissioner of health and to the board of supervisors in each respective county comprised within a mosquito extermination district, a report setting forth the amount of moneys expended during the previous year showing each item of expenditure, the methods employed, the work accomplished and any other information which in its judgment may seem pertinent, or which the board of supervisors may demand. Such report shall be published in at least one newspaper published in the county. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 416. **Reservation of powers.**—Nothing in this article shall be construed to alter, amend, modify or repeal sections twenty-six to thirty-two inclusive, of this law, or of any of the provisions of the drainage law except to the extent that the provisions of this article are inconsistent therewith. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 417. **Temporary provision for nineteen hundred and sixteen.**—If a commission be appointed under this article before June first, nineteen hundred and sixteen, such commission shall, on or before the first day of July, nineteen hundred and sixteen, file with the state commissioner of health in accordance with the provisions of this article an estimate of the moneys required for the year nineteen hundred and sixteen and a plan of the work to be done and the methods to be employed by the commission during such year. The state commissioner of health shall on or before July fifteenth consider such plans, methods and estimates, and approve, modify or alter the same as provided by section four hundred and twelve, and forward the same to the treasurer of such county, who shall at once borrow, on the credit of such county, the amount specified in such estimate, not exceeding, however, the amount specified in section four hundred and thirteen of this chapter. Such amount, so borrowed, shall be a county charge and shall be included by the board of supervisors in the tax levy for the ensuing year. The money so borrowed shall be paid by the county treasurer to the mosquito extermination commission, according to the provisions of section four hundred and fourteen of this chapter. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

§ 418. **Obstructions; interferences.**—Any person who obstructs or interferes with the entry of the commission or its employees upon land or who obstructs or interferes with, molests, or damages any of the work performed

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by the commission shall be guilty of a misdemeanor. (*Added by L. 1916, ch. 408, in effect May 3, 1916.*)

Art. 21. Laws repealed; when to take effect.—*Formerly Article 18, renumbered Art. 19 by L. 1911, ch. 128, renumbered Art. 20 by L. 1912, ch. 445, renumbered Art. 21 by L. 1913, chs. 619 and 630, and renumbered Art. 22 by L. 1916, ch. 408, § 1, in effect May 3, 1916.*)

PUBLIC LANDS LAW.

(L. 1909, ch. 50.)

§ 19. **Taxes, assessments and encumbrances on public lands.**—The commissioners of the land office whenever they deem it for the best interests of the state may order the treasurer, on the warrant of the comptroller, to pay off and cancel any charges, assessments, or encumbrances existing on any lands belonging to the state or in which the state has an interest, or to acquire any outstanding undivided interest in such lands adverse to the title of the state, to perfect in the state a title to any such lands, or to protect the state's interests therein. (*Amended by L. 1916, ch. 329, in effect Apr. 27, 1916.*)

L. 1916, ch. 329, § 2. The treasurer shall pay on the warrant of the comptroller, the sum of five thousand dollars (\$5,000), or so much thereof as shall be necessary, which is hereby appropriated out of any moneys in the treasury not otherwise appropriated, the amounts which may be certified by the commissioners of the land office to be necessary for the purpose of paying off and cancelling any charges, assessments or any encumbrances existing on any lands belonging to the state, or in which the state has an interest, or to acquire any outstanding interests in such lands adverse to the state, to perfect in the state a title to any such lands, or to protect the state's interest therein.

§ 30. **Unappropriated state lands defined.**—The term "unappropriated state lands," as used in this chapter, includes all state lands belonging to the common school fund; all escheated lands; all lands conveyed to the state for the benefit of the canal fund and not devoted in pursuance of law to any public use; all lands purchased by or for the state on the foreclosure of any mortgage given on the loan of any United States deposit funds or on any loan of money for the state; all state lands lying within the limits of any city or village not devoted to any public use; and all other lands belonging to this state which are not directed by law to be kept for or applied to any specific purpose, except lands under water the disposition of which is governed by article six of this chapter and except lands the disposition of which is governed by the salt springs law and except abandoned canal lands the disposition of which is governed by article four of this chapter, and chapters eight hundred and ninety-three and eight hundred and ninety-four of the laws of nineteen hundred and eleven. (*Amended by L. 1916, ch. 299, in effect Apr. 25, 1916.*)

Art. 4.—*Title amended to read as follows by L. 1916, ch. 299, in effect Apr. 27, 1916:*

ABANDONED CANAL LANDS AND STRUCTURES

§ 50. **Sale of abandoned canal lands.**—The commissioners of the land office may sell and convey the right, title and interest of the state in and to any real property, acquired for canal purposes, which the canal board,

by resolution, determine to have been abandoned for such purposes, including any real property, which, at the time it was taken for canal purposes, was owned by the state, and was thereafter conveyed by the state with adjoining lands without express reservation of the part covered by the canal, other than abandoned canals, sold and conveyed by the state prior to April twenty-seventh, eighteen hundred and sixty-nine, and other than dry docks within the canal blue lines in the city of Oswego, built by permission of the state, and other than lands and structures rendered useless for canal purposes by the improvement of state canals authorized by chapter one hundred and forty-seven of the laws of nineteen hundred and three and chapter three hundred and ninety-one of the laws of nineteen hundred and nine and the acts amendatory thereof and supplemental thereto, proceedings for the abandonment and sale of which are provided for in sections fifty-two, fifty-three, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, fifty-nine and fifty-nine-a of this chapter, and chapters eight hundred and ninety-three and eight hundred and ninety-four of the laws of nineteen hundred and eleven. If such property is used at the time of such abandonment as a hydraulic canal, such conveyance shall not prevent the future use thereof for that purpose, but shall expressly reserve the right to continue the same. (*Amended by L. 1916, ch. 299, in effect Apr. 25, 1916.*)

§ 52. **Report of useless lands and structures.**—Upon the completion of any portion of the improvement of the state canals authorized by chapter one hundred and forty-seven of the laws of nineteen hundred and three and chapter three hundred and ninety-one of the laws of nineteen hundred and nine and the acts amendatory thereof and supplemental thereto, and upon the placing in operation and use of such portion for navigation purposes, if any portion of the present canals for which the improved canal furnishes a substitute shall have become no longer necessary or useful as a part of the barge canal system of the state, as an aid to navigation thereon, or upon any portion of the said present canals ceasing to be necessary as part of the said barge canal system because of an alternative available water route, the state engineer and surveyor and superintendent of public works shall make a report to the canal board showing the portions or sections of the improved canals completed and placed in operation, and describing in detail the lands and structures owned by the state for canal purposes rendered or becoming no longer necessary or useful as parts of the barge canal system as an aid to navigation thereon or for public terminal purposes and stating the reasons why such lands and structures are no longer necessary or useful for such purposes. (*Added by L. 1916, ch. 299, in effect Apr. 25, 1916.*)

§ 53. **Resolution of abandonment; appraisal.**—Upon the filing with it of such report, the canal board may, by resolution adopted at a meeting at which the state engineer and surveyor and the superintendent of public

works are present, determine and declare that it is proposed to abandon such lands or structures reported by the state engineer and surveyor and the superintendent of public works as no longer necessary or useful for canal purposes, and fixing a time when and place where interested municipalities, persons, firms and corporations shall be heard, and shall publish such resolution, with notice of the time and place of hearing, which time shall not be less than thirty days after the last date of publication as hereinafter provided. Such publication of such resolution and notice shall be made by publishing the same at least twice a week for two successive weeks in the official state paper, and if such lands or structures proposed to be abandoned are situated wholly or in part in a city or incorporated village where a daily newspaper is published, such resolution and notice shall be published in any such paper at least twice a week for two successive weeks; but if there be no such newspaper published in such city or incorporated village, or such lands or structures are not situated wholly or in part in any city or incorporated village, then such resolution and notice shall be published in a newspaper published in each county in which the lands and structures to be abandoned, or any part thereof, are situated, at least once a week for two successive weeks.

In addition to such publication, such resolution and notice shall, within ten days of the date of the first publication, be served by mailing the same in a securely closed, post-paid wrapper, addressed to each municipality, person, firm or corporation who has filed with the canal board a request in writing that any such resolution and notice be so served on them.

After the hearing herein provided for, the canal board may, by resolution adopted by the affirmative votes of at least three members of the canal board in addition to the affirmative votes of the state engineer and surveyor and the superintendent of public works, abandon the lands and structures so reported and thereupon such lands or structures may be sold and conveyed by the state as in this article provided.

In case any lands or structures are abandoned for canal purposes as herein provided, the commissioners of the land office shall cause to be made an examination of such abandoned lands and structures for the purpose of ascertaining and determining the value of the right, title and interest of the state in the same for manufacturing, commercial or private purposes. Such examination and appraisal shall be made by a committee or by such other method as in the judgment of the commissioners will be for the best interests of the state, and a verified report, containing the results of such examination and appraisal, shall be made and filed with the secretary of state. Such appraisement shall be made in such manner as to permit the sale of the lands and structures so appraised in accordance with the provisions of this article. (*Added by L. 1916, ch. 299, in effect Apr. 25, 1916.*)

§ 54. **Sale to city or village.**—The commissioners of the land office may sell and convey the right, title and interest of the state in and to any such

lands or structures which have been abandoned and appraised pursuant to the provisions of section fifty-three. If any such lands or structures are situated within the limits of a city or incorporated village, and their use in whole or in part is desired by the city or incorporated village wherein they are situated, the commissioners of the land office may sell such lands or structures, in whole or in part, to such city or incorporated village at the appraised value thereof on such terms as may seem advantageous to the state, provided such city or village files with the commissioners of the land office, within four months after the adoption of the resolution of abandonment provided for in section fifty-three of this chapter, a written notice of its intention to purchase the whole or a part of such lands or structures and any city or incorporated village so filing such notice shall be first entitled to purchase either the whole or a part of such lands or structures as may be indicated by such notice, provided such purchase is made within the time and upon the terms as to payment of the purchase price fixed by the commissioners of the land office. Any such city or incorporated village is hereby authorized to acquire such lands or structures and to provide means of payment therefor. (*Added by L. 1916, ch. 299, in effect Apr. 25, 1916.*)

§ 55. *Sale to owner of building.*—The owner of a building located upon any lands situated in a city or incorporated village, so abandoned for canal purposes and not sold to a city or incorporated village as prescribed by section fifty-four, or upon any land or structures so abandoned for canal purposes and not within a city or incorporated village, which building shall have occupied such lands for five years prior to January first, nineteen hundred and sixteen, shall have a preferential right to acquire the land occupied by such building at the appraised value thereof, and the commissioners of the land office shall, on application and proof of occupation by such owner, convey to him at the appraised value the right, title and interest of the state in the land occupied by such building. The commissioners of the land office may serve upon the owner of any such building a notice stating that such land has been abandoned, the appraised value of the land occupied by such building, and that the owner has a preferential right to purchase the same within a time specified in such notice. Such notice may be served personally upon such owner, or upon any adult person in charge of such building, or by attaching the same conspicuously to such building. The time specified in such notice shall not be less than three months after the service thereof. If within such specified time the owner of such building does not avail himself of the privilege of acquiring the land occupied by such building, the commissioners of the land office may dispose of such land in such manner as is otherwise authorized by this article. Any city or incorporated village acquiring lands occupied by such buildings may sell the same at public or private sale. (*Added by L. 1916, ch. 299, in effect Apr. 25, 1916.*)

§ 56. **Sale at public auction.**—Any lands or structures so abandoned for canal purposes, or parts thereof, situated within a city or incorporated village and not acquired by such city or incorporated village or by the owner of a building, within the time and in the manner hereinbefore provided, may, in the discretion of the commissioners of the land office, be sold at public sale to the highest bidder at not less than the appraised value, in separate parcels of not more than one-eighth of a mile in length, such parcels wherever practicable to correspond in length as nearly as may be feasible with the length of the blocks adjacent or nearest thereto, in the city or village where such lands or structures are situated. The determination of the commissioners of the land office as to whether the sale of parcels corresponding to such blocks is practicable, and as to whether the parcels sold do in fact correspond in length to such blocks, shall be final. Any lands or structures so abandoned for canal purposes and not situated within a city or incorporated village nor acquired by the owner of a building as hereinbefore provided may be sold by the commissioners of the land office at public sale to the highest bidder at not less than the appraised value, in such parcels or sections as the commissioners of the land office may determine. If at the time of the abandonment for canal purposes of any parcel of land not situated within a city, the title to the lands abutting on both sides of said parcel is in the same owner such parcel shall be sold subject to the perpetual right of such an owner to cross and recross such parcel so abandoned by means of a bridge, bridges or in such other way as the commissioners of the land office may determine. Such bridge, bridges or other ways of crossing shall be constructed and maintained by such abutting owner at his sole cost and expense, (*Added by L. 1916, ch. 299, in effect Apr. 25, 1916.*)

§ 57. **Place, notice and conduct of sale.**—Such public sale shall take place within the county where the lands or structures to be sold, or a part thereof, are situated. The commissioners of the land office shall fix a time when and place where such sale shall take place and shall publish a notice of such time and place of sale, which time shall not be less than thirty days after the last date of publication as hereinafter provided. Such notice shall contain a description of the lands or structures to be sold. Such publication shall be made at least twice a week for two successive weeks in the official state paper, and if such lands or structures proposed to be sold are situated wholly or in part in a city or incorporated village where a daily newspaper is published, such notice shall be published in any such newspaper at least twice a week for two successive weeks; but if there be no such newspaper published in such city or incorporated village, or if such lands or structures be not situated, wholly or in part, in any city or incorporated village, then such notice shall be published in a newspaper published in each county in which the lands or structures proposed to be sold, or any part thereof, are situated, at least once a week for two successive weeks.

In addition to such publication such notice shall, within ten days of the date of the first publication, be served by mailing the same in a securely closed post-paid wrapper addressed to each person, firm or corporation who may have filed with the commissioners of the land office a request that any such notice of sale be served upon them. (*Added by L. 1916, ch. 299, in effect Apr. 25, 1916.*)

§ 58. **Release of state from obligation of maintenance.**—Each grant or conveyance made by the commissioners of the land office of such lands and structures abandoned for canal purposes shall contain a provision, as one of the conditions thereof, that the people of the state are released from all obligations for maintenance of any and all structures located in the conveyed section, and thereupon all liability on the part of the state for or on account of the maintenance thereof shall cease. (*Added by L. 1916, ch. 299, in effect Apr. 25, 1916.*)

§ 59. **Disposition of proceeds.**—The proceeds from a sale or grant of such lands or structures shall be applied to the cost of the improvement which renders such lands or structures no longer necessary, and any surplus from the sale of abandoned lands and structures above the cost of the entire improvement shall be applied to the sinking fund for the payment of the improvement bonds. (*Added by L. 1916, ch. 299, in effect Apr. 25, 1916.*)

§ 59-a. **Records of canal board and of commissioners of land office.**—A record of all papers filed with, and of proceedings of the canal board or of the commissioners of the land office, pursuant to this article, shall be kept by such board or commissioners respectively. (*Added by L. 1916, ch. 299, in effect Apr. 25, 1916.*)

PUBLIC OFFICERS LAW.

(L. 1909, ch. 51.)

§ 9. Deputies; their appointment, number and duties.

The appointment of a Special Deputy Attorney-General upon the request of the Governor need not be filed with the Secretary of State, under this section. *People ex rel. Osborne v. Board of Supervisors* (1915), 168 App. Div. 765, 154 N. Y. Supp. 266.

§ 30. Creation of vacancies.

An undertaking signed and acknowledged by the principal and two sureties, is defective where neither affidavit of justification was signed by a surety, although the name of the justice of the peace taking the acknowledgments of the signers was written below each jurat. *People ex rel. Preston v. Keator* (1915), 169 App. Div. 368, 154 N. Y. Supp. 1007.

§ 38. Terms of officers chosen to fill vacancies.

Vacancies in the office of school director may be filled by the Town Board, in accordance with section 130 of the Town Law. 6 State Dep. Rep. 425 (1915).

§ 67. Fees of public officers.

Liability of public officers for demanding and receiving fees without authority; recovery of treble damages.—The provision as to the recovery of treble damages against a public officer who has received fees without authority, applies to salaried officials who pay over the sums collected to county or municipal officials, as well as to officials who take the fees themselves. Hence, a county clerk who, under the supposed authority of section 3301 of the Code of Civil Procedure, and in apparent reliance upon a court decision, which was subsequently reversed, demanded and received a fee for the certification of the stenographic minutes of a trial, is liable for treble damages under the statute. *Willett v. Devoy* (1915), 170 App. Div. 203, 155 N. Y. Supp. 920, affg. 90 Misc. 400, 153 N. Y. Supp. 616.

Clerk of Surrogate's Court not authorized to retain fees for copies of records or papers. (1915), 4 State Dep. Rep. 521.

PUBLIC SERVICE.

L. 1916, ch. 545.—An act to incorporate the institute for public service with powers to conduct a training school for public service through assignments of field work, investigations and reports. (*In effect May 15, 1916.*)

PUBLIC SERVICE COMMISSIONS LAW.

(L. 1910, ch. 480.)

§ 3. **Public service districts.**—There are hereby created two public service districts, to be known as the first district and the second district. The first district shall include the counties of New York, Bronx, Kings, Queens and Richmond. The second district shall include all other counties of the state. (*Amended by L. 1916, ch. 422, in effect May 4, 1916.*)

§ 14. **Payment of salaries and expenses.**—1. All salaries and expenses of the commission in the first district shall be audited and allowed by the state comptroller, and paid monthly by the state treasurer upon the order of the comptroller out of the funds provided therefor except salaries and expenses paid or incurred in the exercise of the jurisdiction conferred upon such commission by subdivision two of section five and by section one hundred and twenty-three of this chapter, which salaries and expenses last mentioned shall be chargeable to the city of New York and shall be audited and paid as follows: The board of estimate and apportionment of the city of New York, or other board or public body on which is imposed the duty and in which is vested the power of making appropriations of public moneys for the purposes of the city government shall, on requisition duly made by the public service commission of the first district, stating the purpose for which such moneys are required, appropriate such sum or sums of money as the board of estimate and apportionment or such other board or public body may deem necessary to enable such public service commission to do and perform, or cause to be done and performed, the duties in this or in any other act prescribed, and to provide for the expenses and the compensation of the employees of such commission in so far as the same are hereby made chargeable to the city of New York. The city shall not be liable for any indebtedness incurred by the said commission in excess of such appropriation or appropriations. It shall be the duty of the auditor and comptroller of said city, after such appropriations shall have been duly made, to audit and pay the proper expenses and compensation of the employees of said commission, in so far as the same are hereby made chargeable to the city of New York, upon vouchers therefor, to be furnished by the said commission, which payments shall be made in like manner as payments are now made by the auditor, comptroller or other public officers of claims against and demands upon such city.

2. All salaries and expenses of the commission in the second district shall be audited and allowed by the state comptroller and paid monthly by the state treasurer upon the order of the comptroller, out of the funds provided therefor. (*Amended by L. 1916, ch. 572, in effect July 1, 1917.*)

§ 24. **Action to recover penalties or forfeitures.**—An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the

§ 27.

Switch and side-track connections.

L. 1916, ch. 546.

commission under the railroad law may be brought in any court of competent jurisdiction in this state in the name of the people of the state of New York, and shall be commenced and prosecuted to final judgment by counsel to the commission. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order of the commission the defendant was actually and in good faith prosecuting a suit, action or proceeding in the courts to set aside such order, the court shall remit the penalties or forfeitures incurred during the pendency of such suit, action or proceeding. All moneys recovered in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order. An action may be maintained by the commission for the whole or any part of the penalties or forfeitures prescribed in this chapter, and judgment may be rendered for the amount demanded in the complaint, or for any less amount, as justice may require. (*Amended by L. 1916, ch. 546, in effect May 15, 1916.*)

§ 27. Switch and side-track connections; powers of commissions.

Constitutionality.—A statute under which a domestic railroad company may be compelled to continue switch connections which it voluntarily inaugurated, to a shipper along its line, and limited to its lands, is constitutional. *People ex rel. L. I. R. R. Co. v. Public Service Commission* (1915), 170 App. Div. 429, 156 N. Y. Supp. 198.

Construction of switches on property owned by third party.—This section construed with section 4 does not empower the Commission to require a railroad company to construct switches upon property not owned by it. The Public Service Commission has no authority under the statute to direct a railroad company to make application for a permit for the construction of a siding over public streets, the fee of which is not owned by it, or on the property of the petitioners. *People ex rel. L. I. R. R. Co. v. Public Service Commission* (1915), 170 App. Div. 429, 156 N. Y. Supp. 198.

Duty of shippers to elevate siding to line of railroad property.—Where a railroad company has been directed to elevate its tracks over streets, shippers desiring to continue switch connections, having a siding on their own property, must elevate the same to the line of the railroad property at their own expense, and also obtain any necessary permit from the public authorities. As a basis for obtaining such permit, the Public Service Commission may entertain an application to determine, in advance, whether the railroad company should be required to make a switch connection. *People ex rel. L. I. R. R. Co. v. Public Service Commission* (1915), 170 App. Div. 429, 156 N. Y. Supp. 198.

An existing side track may not be discontinued unless it becomes unsafe or impracticable to have the connection or unless the business done does not justify its maintenance. *Public Service Com. Decision, 5 State Dep. Rep. 357 (1915).*

L. 1916, ch. 546.

Switch and side-track connections.

§§ 29, 31, 35, 37, 49.

§ 29. Changes in schedule; notice required.

Regulation of rates; burden of proof as to reasonableness.—The rule that, in all proceedings instituted before the Public Service Commission against public service corporations to review a change of rates, the burden rests on the complainants to prove that the rates complained of are unreasonable, has been abrogated by chapter 240 of the Laws of 1914, in so far as it relates to common carriers, but remains in force as to all other public service corporations. Hence, where the complainants against a telephone company have failed to discharge the burden cast upon them by this rule, an order of the Public Service Commission fixing rates should be reversed. *People ex rel. New York Telephone Co. v. Public Service Commission* (1915), 169 App. Div. 448, 154 N. Y. Supp. 1093.

§ 31. Unjust discrimination.

Sale of ticket by mistake for less than scheduled rate; recovery of difference.—Where through the oversight or mistake of a railway agent a ticket was sold to defendant good for transportation to and from a certain point for less than the regular schedule rate, the railway company is not estopped and may recover from defendant the difference between what he paid for his ticket and the amount of the regular schedule rate posted in accordance with the Public Service Commissions Law. *New York Central & H. R. R. Co. v. Shelmidine* (1915), 91 Misc. 226, 154 N. Y. Supp. 235.

§ 35. Discrimination prohibited; connecting line.

Application.—This section relates to the transfer of freight from one line or road to the line or road of another, both by the change of freight from the car of one road to the car of the other, and by the transfer of possession of a car from one road to the other, without removing the freight. *Pub. Serv. Com. Decision*, 5 State Dep. Rep. 253 (1915).

§ 37. Distribution of cars.

Duty of carrier to furnish grain doors or bulk heads.—*Pub. Serv. Com. Decision* (1915), 4 State Dep. Rep. 129.

§ 49. Rates and service to be fixed by the commission.

Subdivision 3 of this section empowers the Commission to enforce the provisions of section 35, requiring the carrier to afford reasonable facilities for the interchange of property between different lines. *Pub. Serv. Com. Decision*, 5 State Dep. Rep. 253 (1915).

Mileage books.—The public service commission has jurisdiction to authorize a railroad company to charge a sum exceeding two cents per mile for mileage books described in section 60 of the Railroad Law. *People ex rel. Ulster & Delaware R. R. Co. v. Public Service Commission* (1916), 218 N. Y. —, affg. 171 App. Div. 607, 156 N. Y. Supp. 1065.

Track storage; demurrage; refund of past charges.—While the Public Service Commission of this State has power to determine that "track storage," in addition to demurrage, charged by a railroad company on freight cars from which there is a delay in removing goods, is unreasonable in that the charge is made whether or not the weather permits the removal of goods, said Commission has no power to make an adjudication that the carrier shall refund such unreasonable charges where payment was made prior to the adjudication that the charge was unreasonable. The Public Service Commission has no authority under any provision of the statute to order a carrier to refund past charges. *Murphy v. New York Cent. R. R. Co.* (1915), 170 App. Div. 788, 156 N. Y. Supp. 49.

Where the fare has been fixed by a condition in the franchise under which a road was constructed and under which it operates, the Commission cannot, without consent of the local authorities, authorize or permit a rate higher than that so stipulated. Pub. Serv. Com. Decision, 5 State Dep. Rep. 235 (1915).

See generally *Willis v. City of Rochester* (1916), 93 Misc. 239, 157 N. Y. Supp. 815.

§ 50. Power of commission to order repairs or changes.

Increase of equipment.—*People ex rel. United Traction Co. v. Public Service Commission* (1915), 167 App. Div. 498, 153 N. Y. Supp. 542.

Maintenance of waiting room.—Where the Public Service Commission has ordered a railroad company to maintain, at the intersection of two streets, during certain months of the year, a suitable waiting room or a suitable waiting car for passengers, the failure of the company to comply with the order is not justified by the facts that the municipal authorities refused to permit a waiting car to be stationed in the street, and that, the corner buildings being otherwise occupied, the most available room in the locality would require passengers to walk some distance and to cross railroad tracks. Nor was the order complied with when the railroad company induced the keeper of a restaurant in the vicinity to display a sign which read "waiting station," and to allow passengers to wait for cars in his restaurant. *Matter of Public Service Commission v. New York & Queens County Ry. Co.* (1915), 170 App. Div. 580, 156 N. Y. Supp. 323.

It seems, that if the railroad company cannot secure a waiting room except by the exercise of eminent domain, or is in danger of extortion for rent, it may apply to the Public Service Commission for relief. *Matter of Public Service Commission v. New York & Queens Co. Ry. Co.* (1915), 170 App. Div. 580, 156 N. Y. Supp. 323.

§ 53. Franchises and privileges.

Modification of franchise.—While the Commission may stipulate terms and conditions upon which its approval will be granted, it cannot modify a franchise itself and approve it as so modified. It cannot modify a franchise by eliminating a condition upon which the local authorities granted it. Pub. Serv. Com. Decision, 5 State Dep. Rep. 235 (1915).

Application for certificate of public convenience and necessity, jurisdiction of Public Service Commission, identification of terminus of proposed road, see *People ex rel. New York Central & Hudson River R. R. Co. v. Public Service Commission* (1916), 171 App. Div. 366, 156 N. Y. Supp. 1023.

§ 55. Approval of issues of stock, bonds, etc.

Consolidation; issue of refunding bonds.—A railroad company which with the consent of its bondholders proposes to consolidate with another railroad company may legally be authorized, as an incident to such consolidation, to issue four per cent interest bearing bonds in order to replace and retire outstanding three and one-half per cent bonds which it had previously issued. Such an issue of refunding bonds bearing a higher rate of interest is not a violation of either section 141 of the Railroad Law or section 55 of the Public Service Commissions Law, when issued in connection with such consolidation. *Continental Securities Co. v. New York Central & Hudson River R. R. Co.* (1915), 168 App. Div. 345, 153 N. Y. Supp. 879, *affd.* 217 N. Y. 119.

Issue of refunding bonds.—The Public Service Commission in determining whether a municipal street railroad company, which is in the hands of a receiver and whose stock is substantially all owned by another railroad company which also has acquired substantially all the claims against it, shall be permitted to issue

bonds secured by a mortgage for the purpose of refunding existing debts and obligations, may require the petitioner to prove that the securities sought to be refunded represent actual investments for the company's capital account. The Public Service Commissioners must be satisfied that such is the case, and they are judges of the equity and value of the proof produced before them. In a refunding case the inquiry of the Commission is properly directed to the following matters and the evidence requisite to reach a determination thereupon must be furnished by the petitioner: (1) Whether the proposed issue is reasonably required for the refunding purposes; (2) whether the expenditure to be refunded is a capital, as distinct from an operating or income, charge; (3) if the expenditure to be refunded is an operating or income charge, whether such refunding should nevertheless be permitted under the exception clause of the statute. The consent of the Public Service Commission to the issuance of securities to refund existing debts must be obtained although the original obligations were incurred before the Public Service Commissions Law went into effect. A prior determination by a Federal court that certain indebtedness sought to be refunded represented investments for the capital account of the company is not binding upon the Commissioners on the application to issue refunding securities where the Commissioners were not parties to the Federal action. *It seems*, that section 55-a of the Public Service Commissions Law, added to the statute in 1912, relating to the issue of securities, applies solely to the reorganization of railroads, and does not affect the law respecting the refunding of obligations of a railroad company where it is not proposed to reorganize it. *People ex rel. Dry Dock, etc., R. R. Co. v. Public Service Commission* (1915), 167 App. Div. 286, 15 N. Y. Supp. 344. See also cases cited under Railroad Law, § 141.

§ 57. Summary proceedings.

A writ of mandamus requiring a railroad company to maintain a station pursuant to the order of the Public Service Commission should not be amended to require, in the alternative, the maintenance of a "waiting car," where the stationing of such vehicle in the public highway would create a public nuisance. A peremptory writ of mandamus should command that which is in conformity with a legal obligation imposed; but it may vary the details of the manner of doing that act. *Matter of Public Service Commission v. New York & Queens Ry. Co.* (1915), 170 App. Div. 580, 156 N. Y. Supp. 323.

§ 66. General powers of commissions in respect to gas and electricity.

The jurisdiction given by subdivision 2 of this section is under the general powers of the Public Service Commission in respect to gas and electricity. *Pub. Serv. Com. Decision* (1915), 4 State Dep. Rep. 26.

Extension of mains by an electric company may be ordered regardless of the immediate revenue which will be derived therefrom, but the Commission must use its best discretion in each particular case. *Pub. Serv. Com. Decision*, State Dep. Rep. Adv. Sheet No. 37, p. 24 (1915).

Extensions of gas mains may be ordered where reasonable. *Pub. Serv. Com. Decision* (1915), 4 State Dep. Rep. 26.

Review of order of Public Service Commission that gas company extend its service; when order for extension unreasonable.—Under subdivision 2, of this section, giving the Commission authority "To order reasonable improvements and extensions of the works, . . . apparatus and property of gas corporations, electrical corporations and municipalities," it remains for the court to determine, upon the review of an order by the Commission that a gas company extend its service, whether such extension is reasonable. This question must be considered in the view, *first*, of the

§§ 68, 72, 96.

Investigations by commission.

L. 1916, ch. 423.

needs of the community, and, *second*, of the burdens placed upon the company. Where, upon the review of an order by the Commission that a gas company extend its mains and service, it appears that at the place sought to be supplied the houses already built have electricity, and that the only requirement for gas is for cooking and heating in the summer months; that none of the houses have been piped for gas; that for a distance of five miles the mains will have to be changed, and that for a mile there will be no consumers; that the company must borrow money for the new construction, and that the returns from the new customers will not pay one-half the interest on the loan, the order of extension must be held to be unreasonable. *People ex rel. New York & Queens Gas Co. v. McCall* (1916), 171 App. Div. 580, 157 N. Y. Supp. 707.

§ 68. Approval of incorporation and franchises.

See generally *Village of Fredonia v. Fredonia Natural Gas Light Co.* (1915), 169 App. Div. 690, 155 N. Y. Supp. 212.

§ 72. Notice and hearing; order fixing price of gas or electricity.

Jurisdiction given under this section contemplates a proceeding or investigation instituted upon complaint in the form prescribed in section 71, namely, complaint of the Mayor of the city, or not less than one hundred customers of the company. *Pub. Serv. Com. Decision* (1915), 4 State Dep. Rep. 26.

§ 96. Investigations by commission.—1. The commission may of its own motion investigate or make inquiry in a manner to be determined by it as to any act done or omitted to be done by any telegraph corporation or telephone corporation and the commission must make such inquiry in regard to any act done or omitted to be done by any telegraph corporation or telephone corporation in violation of any provisions of law or in violation of any order of the commission.

2. The commission may of its own motion or upon complaint of any person or corporation aggrieved investigate and determine whether the property of any corporation or person actually used within the state in the business of affording telephonic communication for hire is of a value exceeding ten thousand dollars.

3. Complaints may be made to the commission by any person or corporation aggrieved, by petition or complaint in writing, setting forth any act done or omitted to be done by any telegraph corporation or telephone corporation alleged to be in violation of the terms or conditions of its franchise or charter or of any order of the commission. Upon the presentation of such a complaint the commission shall cause a copy thereof to be forwarded to the person or corporation complained of which may be accompanied by an order directed to such person or corporation requiring that the matters complained of be satisfied or that the charges be answered in writing within a time to be specified by the commission. If the person or corporation complained of shall make reparation for any injury alleged and shall cease to commit or permit the violation of law, franchise, charter or order charged in the complaint, if any there be, and shall notify the commission of that fact before the time allowed for answer, the commission

L. 1916, ch. 342.

Transfer to United States.

§§ 1, 2.

need take no further action upon the charges. If, however, the charges contained in such petition be not thus satisfied and it shall appear to the commission that there are reasonable grounds therefor, it shall investigate such charges in such manner and by such means as it shall deem proper and take such action within its powers as the facts in its judgment justify.

4. Whenever the commission shall investigate any matter complained of by any person or corporation aggrieved by any act or omission of a telegraph corporation or telephone corporation under this section, it shall be its duty within sixty days after final submission to make and file an order either dismissing the petition or complaint or directing the telegraph corporation or telephone corporation complained of to satisfy the cause of complaint in whole or to the extent which the commission may specify and require. (*Added by L. 1910, ch. 673, and amended by L. 1916, ch. 423, in effect Sept. 1, 1916.*)

§ 97. Telephone and telegraph rates, rentals and service.

Equitable relief from rates of telephone company.—As the Public Service Commission of the Second District is given general supervision and control over the rates and operation of telephone companies within the district, a subscriber seeking equitable relief from the rates established by a company, and filed with the Public Service Commission, must apply to said Commission, where there is no strictly contractual right which he can enforce in the courts. *Murray v. New York Telephone Co. (1915), 170 App. Div. 17, 156 N. Y. Supp. 151.*

QUARANTINE ESTABLISHMENT.

L. 1916, ch. 342.—An act creating a commission to negotiate for the transfer of the quarantine establishment to the United States with power to effectuate such transfer, and if such transfer be effectuated, abolishing the office of health officer for the port of New York and ceding jurisdiction over the quarantine establishment to the United States. (*In effect Apr. 27, 1916.*)

§ 1.—A commission is hereby created consisting of the governor, lieutenant-governor, attorney-general, comptroller and state engineer and surveyor, to negotiate with the proper authorities of the United States, for the transfer of title or the surrender of the possession and use to the United States, upon the payment of such compensation as may be agreed upon, of the quarantine establishment of this state, consisting of docks and wharves, anchorage for vessels, stationary hospital, boarding station, crematory, residence for officers and men, and such other places and structures as have been authorized by law for quarantine purposes. If such agreement be made, such commission shall have power to execute and deliver to the proper authorities of the United States, in behalf of this state, all deeds and other instruments necessary to effectuate such transfer or surrender.

§ 2.—Upon the completion of such transfer or surrender, such commission shall file a certificate thereof, in duplicate, in the offices of the secretary of state and state comptroller, and thereupon the office of health officer for the port of New York shall be abolished, and the terms of office of the

health officer for the port of New York then in office and of all his subordinate officers and employees shall terminate.

§ 3.—Upon the transfer of title or the surrender of the possession and use of the quarantine establishment to the United States pursuant to this act, jurisdiction of the land and water included in such establishment shall be ceded to the United States by this state, on condition that the jurisdiction so ceded shall not prevent the execution thereon of any process, civil or criminal, issued under the authority of the state, except as such process might effect the property of the United States therein, and that such jurisdiction shall continue in the United States so long only as such land and water shall remain the property or in the possession of the United States.

RAILROAD LAW.

(L. 1910, ch. 481.)

§ 9. Certificate of convenience and necessity.

Application for certificate of public convenience and necessity; identification of terminus of proposed road.—The Public Service Commission upon an application by a railroad company for a certificate of convenience and necessity may consider and approve any route which leaves unchanged the termini of the road. It is the description of the proposed line as embodied in the certificate of incorporation which forms the sole limitation to the investigation of the Commission, and such general identification is not required to proceed further than a location of the two ends of the line. Where a certificate of incorporation describes the northerly terminus as being 50 feet northerly of the southerly line of a designated lot in a certain town, and about 500 feet westerly of the westerly line of the right of way of the Niagara Falls branch of the New York Central and Hudson River railroad, and further identifies the terminus as being in the center line of the Buffalo Frontier Terminal railroad, a determination of the Commission awarding a certificate of convenience and necessity, which identifies said terminus as being about 1,200 feet easterly of the New York Central and Hudson River railroad, and further indicating another connection some 700 feet westerly of that right of way, should be approved, especially where the real objective is identified as the line of the Buffalo Frontier Terminal railroad, and the point of intersection with such line is indefinitely described in the articles of incorporation. *People ex rel. New York Central & Hudson River R. R. Co. v. Public Service Commission* (1916), 171 App. Div. 366, 156 N. Y. Supp. 1023.

§ 21. Railroads along highways.—No railroad corporation shall erect any bridge or other obstruction across, in or over any stream or lake, navigated by steam or sail boats at the place where it may be proposed to be erected, except as hereinafter provided, nor shall it construct its road in, upon or across any street of any city without the assent of the corporation of such city, nor across, upon or along any highway in any town or street in any incorporated village, without the order of the supreme court of the district in which such highway or street is situated, made at a special term thereof, after at least ten days' written notice of the intention to make application for such order shall have been given to the superintendent of highways of such town, or board of trustees of the village in which such highway or street is situated. A railroad corporation may construct and maintain a bridge for the purposes of its railroad, over any creek within this state, navigated as aforesaid, provided that the consent of the public service commission be granted; and provided further, that in case such waters are used as a part of the canal system, that the consent of the canal board be obtained. Every railroad corporation which shall build its road along, across or upon any stream, watercourse, street, highway, plank-road or turnpike, which the route of its road shall intersect or touch, shall restore the stream or watercourse, street, highway, plank-road and turnpike, thus intersected or touched, to its former state, or to such state as not to have unnecessarily impaired its usefulness, and any such highway, turn-

pike or plank-road may be carried by it, under or over its track, as may be found most expedient. In all cases where a railroad crosses a highway at grade, the corporation owning or operating such railroad shall construct and maintain a roadway at least sixteen feet wide. Such roadway shall be constructed by planking, or equally serviceable material for making a permanent road bed, which shall extend at least one foot outside of the outside rails through and across the entire space between the rails at such crossing. Where an embankment or cutting shall make a change in the line of such highway, turnpike or plank-road desirable, with a view to a more easy ascent or descent, it may construct such highway, turnpike or plank-road, on such new line as its directors may select, and make take additional lands therefor by condemnation if necessary. Such lands so taken shall become part of such intersecting highway, turnpike or plank-road, and shall be held in the same manner and by the same tenure as the adjacent parts of the highway, turnpike or plank-road are held for highway purposes. Every railroad corporation shall pay all damages sustained by any turnpike or plank-road corporation in consequence of its crossing or occupation of any turnpike or plank-road, and in case of inability to agree upon the amount of such damages it may acquire the right to such crossing or occupation by condemnation. (*Amended by L. 1913, ch. 743, and L. 1916, ch. 109, in effect Apr. 1, 1916.*)

Contract permitting additional pieces of track to be laid held not to contravene this section. *McCutcheon v. Terminal Station Commission* (1916), 217 N. Y. 127, 137.

§ 52. Fences, farm crossings and cattle guards.

The last sentence of this section which provides that in the event of dispute, the question of crossings is to be determined by the Supreme Court, takes away from the Public Service Commission jurisdiction in such cases. *Pub. Serv. Com. Decision, State Dep. Rep., Adv. Sheet No. 39, p. 18* (1916).

Farm crossing.—An owner of property which is divided by the tracks of a railroad company, is entitled to the crossing, whether intended for farming purposes or not. *Pub. Serv. Com. Decision, State Dep. Rep., Adv. Sheet No. 39, p. 18* (1916).

§ 53. Sign boards and flagmen at crossings.

An application or request under this section need not be made in the alternative. *Pub. Serv. Com. Decisions* (1915), 4 *State Dep. Rep.* 120.

Upon refusal by a railroad company to comply with a request, the Public Service Commission may determine the method of protection. *Pub. Serv. Com. Decision* (1915), 4 *State Dep. Rep.* 120.

Formal pleadings are not required by this section or the rules of the Public Service Commission. *Pub. Serv. Com. Decisions* (1915), 4 *State Dep. Rep.* 120.

Automatic bell ordered at one crossing and flagman at another. *Pub. Serv. Com. Decisions* (1915), 4 *State Dep. Rep.* 120.

§ 54. Notice of starting trains; no preferences.

Discontinuance of passenger service on branch line refused. *Pub. Serv. Com. Decisions*, 5 *State Dep. Rep.* 283 (1915).

§ 58. Excess charge when fare paid on cars.

Application.—The provision for an excess charge of ten cents where the passenger is not provided with a ticket, is not applicable to street railways. *Metzger v. New York State Railways* (1915), 168 App. Div. 187, 154 N. Y. Supp. 789.

§ 60. Issue and use of mileage books.

The maximum rate for mileage books is established by this section as amended, in the absence of an order by the Public Service Commission, and such section represents the law on the subject so long as the Commission takes no action. But sections 49 and 33 of the Public Service Commissions Law, as amended, authorize the Commission to make an investigation, and where it appears that the statutory rate of two cents per mile is insufficient, the Commission may, by order, increase the rate. *People ex rel. Ulster & Delaware R. R. Co. v. Pub. Serv. Comm.* (1916), 171 App. Div. 607, 156 N. Y. Supp. 1065, *affd.* 218 N. Y. — (mem.).

The public service commission has jurisdiction to authorize a railroad company to charge a sum exceeding two cents per mile for its 500-mile and 1000-mile tickets described in section 60 of the Railroad Law. *People ex rel. Ulster & Delaware R. R. Co. v. Public Service Commission* (1916), 218 N. Y. — (mem.), *affg.* 171 App. Div. 607, 156 N. Y. Supp. 1065.

§ 64. Injuries to employees.

Construction of section should be liberal and commensurate with its purpose. *Kent v. Erie R. R. Co.* (1916), 217 N. Y. 349, 353.

See generally *Kinney v. New York Central and Hudson River R. R. Co.* (1916), 217 N. Y. 325, 331.

§ 71. Duties imposed.

Marus v. Central R. R. Co. of New Jersey (1915), 170 App. Div. 158, 162, 155 N. Y. Supp. 586.

§ 89. New railroads across streets.

Application to street and highway crossings.—Pub. Serv. Com. Decision, State Dep. Rep., Adv. Sheet No. 37, p. 64 (1916).

Crossing at grade allowed. Pub. Serv. Com. Decisions (1915), 4 State Dep. Rep. 124.

§ 90. New streets across railroads.

Extension of street across a railroad by an overhead bridge; easements of abutting landowner; injunction requiring elimination of crossing in event of non-payment of damages.—Where a street, which did not theretofore cross a railroad, was extended and carried over the railroad tracks by an overhead bridge, the opening of the street across the railroad was the opening of a new street, or new portion of a street, within the express terms of section 61 of the Railroad Law (L. 1890, ch. 565, as *amd.* L. 1898, ch. 520), and the erection of the bridge and its approaches without the consent of the railroad commissioners, as then required by said section 61, now section 90 of the Railroad Law, was an unlawful obstruction of the highway, and an owner of abutting land, whose easements of light, air and access to the street were injuriously affected by such bridge and approaches, has a right of action on account of the resulting injury. He is not entitled, however, to an absolute judgment requiring the elimination of the overhead crossing in the event of the non-payment of his damages, but only for its elimination if it is not now or hereafter made satisfactory to the public service commission which has succeeded to the functions of the board of railroad commissioners. The judgment

§§ 91, 93.

Highway crossings; repairs.

L. 1916, ch. 484.

should be modified so as to enjoin the railroad company from maintaining the bridge across its railroad unless and until the said bridge and its approaches shall receive the sanction of the public service commission under section 90 of the existing Railroad Law. *Brush v. New York, New Haven & Hartford R. R. Co.* (1916), 218 N. Y. 264, modfg. 162 App. Div. 731.

§ 91. Petition for alteration of existing crossing.

A civic league and other residents in the vicinity are not parties upon whose petition the Public Service Commission may act. Pub. Serv. Com. Decisions, State Dep. Rep., Adv. Sheet No. 37, p. 19 (1915).

§ 93. Repair of bridges and subways at crossings.—When a highway crosses a railroad by an overhead bridge, the framework of the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the roadway thereover and the approaches thereto shall be maintained and kept in repair by the municipality having jurisdiction over and in which the same are situated; except that in the case of any overhead bridge constructed prior to the first day of July, eighteen hundred and ninety-seven, the roadway over and the approaches to which the railroad company was under obligation to maintain and repair, such obligation shall continue, provided the railroad company shall have at least ten days' notice of any defect in the roadway thereover and the approaches thereto, which notice must be given in writing by the town superintendent of highways or other duly constituted authority, and the railroad company shall not be liable by reason of any such defect unless it shall have failed to make repairs within ten days after the service of such notice upon it. When a highway passes under a railroad, the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the subway and its approaches shall be maintained and kept in repair by the municipality having jurisdiction over and in which the same are situated. In case such highway is a part of a state or county highway constructed or improved as provided in article six of the highway law, the roadway over such railroad or the subway underneath the same, and the approaches thereto, shall be maintained and kept in repair under the supervision and control of the state commission of highways in the manner provided by the highway law for the maintenance and repair of state and county highways where such roadway, subway or approaches, or any of them, have been constructed or improved as a part of a state or a county highway. (*Amended by L. 1913, ch. 744, and L. 1916, ch. 484, in effect May 9, 1916.*)

Apportionment of cost of repairing street bridges over railroad tracks in twenty-third and twenty-fourth wards, New York city; statutes construed.—Although chapter 645 of the Laws of 1897, which authorized the commissioner of street improvements of the twenty-third and twenty-fourth wards of the city of New York to erect suitable bridges to carry public streets over the tracks of the New York Central and Hudson River railroad in said wards, provided that such bridges shall always be free for traffic and shall when completed "be kept and maintained in good order and repair by the said commissioner of street improvements," said statute must be construed in harmony with that portion of the Railroad Law

enacted the same day and at present embodied in section 93 of the Railroad Law, which places upon railroad companies the burden of maintaining and keeping in repair the abutments and framework of highway bridges, placing upon the municipality only the burden of maintaining the roadway. Said provisions of the latter statute are controlling as to bridges over railroad tracks in the twenty-third and twenty-fourth wards of the city of New York, the former statute notwithstanding. Hence, when railroad bridges conducting streets over railroad tracks in said wards of the city of New York become out of repair and dangerous to traffic, the railroad company, not the city, must bear the cost of placing the abutments and framework of the bridges in good condition. *City of New York v. New York Central R. R. Co.* (1915), 168 App. Div. 6, 153 N. Y. Supp. 747.

The maintenance and up-keep of a railroad bridge and its abutments, constituting overhead crossing of a railroad on a state or county highway, should be cared for by the railroad, but the maintenance and up-keep of the approaches to such bridge is imposed upon the state by this section, and must be cared for under the supervision and control of the State Commission of Highways. *Pub. Serv. Com. Decisions*, 6 State Dep. Rep. (1916).

Maintenance and repairs as relating to bridge, what constitute. *Pub. Serv. Com. Decisions* (1915), 4 State Dep. Rep. 149.

§ 98. Intersections of railroads.

Application of section.—*State Dep. Rep.*, Adv. Sheet No. 37, p. 64 (1916).

§ 140. Consolidation.

Upon the consolidation of the New York Central and Hudson River Railroad Company, extending from New York to Buffalo, and the Lake Shore and Michigan Southern Railroad Company, extending from Buffalo to Chicago, their respective lines formed "a continuous or connected line of railroad with each other," within the meaning of section 140 of the Railroad Law. *Venner v. New York Central R. R. Co.* (1916), 94 Misc. 671, 158 N. Y. Supp. 602.

§ 141. Consolidation; conditions.

An increase of the rate of interest as an incident to a readjustment of existing mortgages does not constitute the issue of bonds or other evidences of debt "as a consideration for, or in connection with, consolidation" of railroads, within the meaning of this section of the Railroad Law, when read, as it must be, with section 142 of the same statute, which provides that it shall be lawful for the consolidated company "to issue its bonds for the purpose of paying or retiring any bonds theretofore issued" by either of the companies so consolidated. There is the same authority to change the rate of interest that there is to change the nature of the property covered by the mortgage. *Continental Securities Co. v. New York Central and Hudson River R. R. Co.* (1916), 217 N. Y. 119, affg. 168 App. Div. 345, 153 N. Y. Supp. 879.

The prohibition against the issuance of bonds or evidences of debt in connection with the consolidation of railroad companies contained in this section of the Railroad Law relates only to indebtedness of principal and interest which has already accrued. *Continental Securities Co. v. New York Central & Hudson River R. R. Co.* (1915), 168 App. Div. 345, 153 N. Y. Supp. 879, affd. 217 N. Y. 119.

Issue of refunding bonds.—A railroad company which with the consent of its bondholders proposes to consolidate with another railroad company may legally be authorized, as an incident to such consolidation, to issue four per cent interest bearing bonds in order to replace and retire outstanding three and one-half per cent bonds which it had previously issued. Such an issue of refunding bonds bearing a higher rate of interest is not a violation of either this section of the

§§ 170, 181, 184, 192.

Center bearing rails.

Railroad Law or section 55 of the Public Service Commissions Law, when issued in connection with such consolidation. *Continental Securities Co. v. New York Central & Hudson River R. R. Co.* (1915), 168 App. Div. 345, 153 N. Y. Supp. 879, *affd.* 217 N. Y. 119. See also cases cited under *Public Service Commissions Law*, § 55.

§ 170. Street surface railroads; general provisions.

Right of way.—When a street railway has acquired an easement or right of way along streets laid out on maps but not on the ground, such rights of way cannot be condemned in a proceeding by a city to open such streets. *Matter of City of New York* (1916), 218 N. Y. 274, *affg.* — App. Div. —.

§ 181. Rate of fare.

Transfers on municipal street railroads; parallel railroads; powers of Public Service Commission.—Where a municipal street railroad company maintains tracks on parallel streets a little over one-third of a mile apart, and one of the tracks, turning at right angles, intersects the other, it is proper for the Public Service Commission to order the railroad company to give transfers entitling passengers to change cars at the point of intersection, although it may be possible that in some instances a passenger may return on the parallel street to a point opposite that from which he originally took passage. It is no valid objection to such order that a passenger might procure a transfer, do shopping and then ride back on the other track, for under the statute a passenger is only entitled to a "continuous" ride, and the company can easily guard against such use of a transfer by limiting its validity to a reasonable time, dependent upon the frequency of passing cars. *People ex rel. New York State Railways v. Public Service Commission* (1915), 167 App. Div. 279, 153 N. Y. Supp. 18.

See generally *Willis v. City of Rochester* (1916), 93 Misc. 239, 157 N. Y. Supp. 815.

§ 184. Abandonment of part of route.

Jurisdiction of Public Service Commission to approve, in part, a declaration of abandonment. *Pub. Serv. Com. Decisions*, 6 *State Dep. Rep.* 21 (1915).

§ 192. Center bearing rails prohibited.

Injury to horse by catching shoe between main rail and guard rail at crossing; "center-bearing" rail within meaning of section.—Where, in an action for injuries to a horse sustained by catching one of the calks of the horse's shoe between the main rail and guard rail at a street railway crossing, it appeared that the rails used by the defendant were ordinary eighty-pound T rails; that there was placed inside its main rail another T rail as a guard rail; that the base of one of the rails was chiseled off and they were then bolted together, leaving a space between the heads of the rails one and one-half inches wide and about four inches deep, which had been filled with gravel to within one and one-half or two inches of the surface of the rails, and that the street between the guard rails and for a space outside the main rail was paved with brick which were fitted tightly against the rails, it was a question of fact for the jury as to whether a T rail was ordinarily known as a "center-bearing" rail within the meaning of this section and also as to whether the defendant was negligent in maintaining such a construction at the crossing. *Stebbins v. Hudson Valley R. R. Co.* (1915), 170 App. Div. 1, 155 N. Y. Supp. 649.

REAL PROPERTY.

Code of Civil Procedure.

§ 1678. **Sale; notice of; how conducted.**—A sale made in pursuance of any provision of this title, must be at public auction to the highest bidder. Notice of such sale must be given by the officer making it, as prescribed in section fourteen hundred and thirty-four of this act for the sale by a sheriff of real property, by virtue of an execution, unless the property is situated wholly or partly in a city or in an incorporated village of the first class in which a daily, semi-weekly or tri-weekly newspaper is published, and, in that case, by publishing notice of the sale in such a daily, semi-weekly or tri-weekly paper, at least twice in each week for three successive weeks, or in a weekly paper published in a city or in such incorporated village of the first class, once in each of the six weeks, immediately preceding the sale, or in the counties of New York and Kings in two such daily papers, which, if the property be located in the county of New York, shall be designated for that purpose by and in the judgment directing such sale. If the officer appointed to make such sale does not appear at the time and place where such sale has been advertised to take place, then in that case the attorney for the plaintiff may postpone or adjourn such sale, not to exceed four weeks, during which time such attorney may make application to the court to have another person appointed to make such sale. Notice of the postponement of the sale must be published in the paper or papers wherein the notice of sale was published. The terms of the sale must be made known at the sale, and if the property, or any part thereof, is to be sold subject to the right of dower, charge or lien, that fact must be declared at the time of the sale. If the property consists of two or more distinct buildings, farms or lots they shall be sold separately, unless otherwise ordered by the court; and provided, further, that where two or more buildings are situated on the same city lot, they be sold together. (*Amended by L. 1916, ch. 589, in effect Sept. 1, 1916.*)

§ 1679. **Purchases by certain officers prohibited; limitation on actions to set aside sale.**—A commissioner or other officer making a sale, as prescribed in this title, or a guardian of an infant party to the action, shall not, nor shall any person, for his benefit, directly or indirectly, purchase, or be interested in the purchase of any of the property sold; except that a guardian may, where he is lawfully authorized to do so, purchase for the benefit or in behalf of his ward. The violation of this section, is a misdemeanor; and a purchase made contrary to this section, is void. But no action shall be brought for or in respect to real property by a person claiming that the property has been heretofore sold under a judgment in an action directing the sale wherein there were infant defendants for whom a guardian ad litem had been appointed, and the premises were sold at public auction and purchased by or on behalf of such guardian ad litem, commissioner

L. 1916, ch. 585.Purchases by certain officers.

or other officer and where the deed to the premises so purchased has been recorded in the proper office for thirty years, unless such action shall be commenced within six months after this act takes effect. (*Amended by L. 1916, ch. 585, in effect Sept. 1, 1916.*)

L. 1916, ch. 585, § 2. This act shall not affect any action or proceeding now pending in any court of this state.

L. 1916, ch. 364.

Undisposed profits.

§§ 42, 63, 66, 98.

REAL PROPERTY LAW.

(L. 1909, ch. 52.)

§ 42. Suspension of power of alienation.

See generally *Brevoort v. Townsend* (1915), 91 Misc. 143, 154 N. Y. Supp. 1031.

§ 56. Posthumous children.

Kane v. Odell (1916), 171 App. Div. 324, 157 N. Y. Supp. 308.

§ 63. Undisposed profits.—When, in consequence of a valid limitation of an expectant estate, there is a suspension of the power of alienation, or of the ownership, during the continuance of which the rents and profits are undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the persons presumptively entitled to the next eventual estate. But any and all persons who legally shall have begun heretofore, or shall begin hereafter, to receive any such undisposed of rents and profits or any part thereof by virtue of this section or otherwise, shall continue to receive and enjoy the same notwithstanding the birth thereafter of a child or children to any person or persons receiving all or any part of such rents and profits. (*Amended by L. 1916, ch. 364, in effect May 1, 1916.*)

§ 66. When estates in common; when in joint tenancy.

Tenants in common.—A testatrix, by will drawn by a layman, gave and bequeathed unto her sons John and Thomas a homestead, with the buildings thereon “jointly to be divided by said sons as they may deem fit and proper, or to be held jointly if they choose.” This was the only devise or bequest to John. The testatrix also gave two legacies “to be paid by my son John Haddock from the proceeds of his bequest.” It was *held*, that the testatrix intended to use the term “jointly” in the sense of “together,” and that John and Thomas were seized of the homestead as tenants in common. *Matter of Haddock* (1915), 170 App. Div. 26, 155 N. Y. Supp. 630.

A devise to certain named heirs creates a tenancy in common unless expressly declared by the instrument to be a joint tenancy. *Matter of Tamargo* (1915), 170 App. Div. 10, 155 N. Y. Supp. 845, revg. 89 Misc. 674, 152 N. Y. Supp. 208.

The creation of a tenancy by the entirety is permitted by law and a husband may by conveyance to himself and his wife create such a tenancy, thereby reserving to himself the same rights he would have under a deed from a third person. *Matter of Klatzl* (1915), 216 N. Y. 83, revg. 166 App. Div. 921, 151 N. Y. Supp. 1125.

§ 98. Surplus income of trust property liable to creditors.

Application.—The provision, making the surplus income of trust property liable to the creditors of the beneficiary though in terms applicable only to real estate, applies equally to trusts of personal property. *Jenks v. Title Guarantee & Trust Co.* (1915), 170 App. Div. 830, 156 N. Y. Supp. 478.

Surplus income; how ascertained.—Where the annual income of a spendthrift trust is upwards of \$23,000, and the beneficiary, who has been discharged in bankruptcy, has no family depending upon him for support excepting a wife, and it is found that \$9,000 per year will be sufficient for the support of himself and wife, a decree that the balance of the income be paid to the trustee in bankruptcy pursuant to

this section is properly rendered. Where the decree in such action reserves to the plaintiff trustee the right to apply at the foot of the judgment, from time to time, for such relief as to the court may seem just and equitable, it should reserve a similar right to the defendant beneficiary in case circumstances arise which make a larger proportion of the income necessary for his support. *Jenks v. Title Guarantee & Trust Co.* (1915), 170 App. Div. 830, 156 N. Y. Supp. 478.

§ 199. When widow to elect between jointure and dower.

A widow is entitled to dower in addition to testamentary provisions in her favor unless it is clear from the will that she should not have both. Where testator gave his real and personal property to trustees without power to sell or mortgage the realty, but directed them to pay the net profits of the estate to his widow during her life or until her remarriage and the will expressly provides that in the event of her remarriage her interest in testator's estate shall be limited to dower, she is entitled both to dower and the testamentary provisions for her benefit. *Matter of Knabe* (1916), 94 Misc. 67, 157 N. Y. Supp. 267.

Life estate in lieu of dower.—Where testator gave his wife a life estate in all his real estate after payment of taxes, insurance and repairs and authorized his executors and trustees to mortgage said real estate in certain contingencies, the widow is not also entitled to dower therein. *Matter of Foster*, 93 Misc. 400, 156 N. Y. Supp. 1005.

§ 227. When tenant may surrender premises.

See generally *Cox v. Cryder* (1915), 168 App. Div. 624, 154 N. Y. Supp. 452; *Trumbull v. Bombard* (1916), 171 App. Div. 700, 157 N. Y. Supp. 794.

§ 232. Duration of certain agreements in New York.

Application.—It is only where there is an agreement for hiring in which the term of a lease remains undetermined that section 232 of the Real Property Law applies. A three-year lease of premises expiring May 1, 1915, was terminated by a mortgage foreclosure prior to July 1, 1914, and the tenant paid the rent reserved to the new landlord each month until January 30, 1915, when he paid the rent for that month and vacated the premises. In an action to recover rent for February, 1915, on the theory that there was an indefinite hiring which this section converted into a hiring until May 1, 1915, judgment was granted for plaintiff. *Held*, that there being no agreement except such as could be implied from payment of monthly rent the tenancy must be held to be a monthly one which terminated at the end of every month, and that the judgment should be reversed and the complaint dismissed. *Kelley v. Osborn* (1915), 92 Misc. 201, 155 N. Y. Supp. 451.

§ 241. Ancient conveyances abolished.

This section is permissive and protective and not mandatory.—It protects subsequent purchasers and mortgagees who purchase in good faith, pay a valuable consideration and first record. *Matter of Mosher* (1915), 224 Fed. 739.

Trustees in bankruptcy are not subsequent purchasers in good faith and for value.—*Matter of Mosher* (1915), 224 Fed. 739.

§ 242. When written conveyance necessary.

The surrender of a lease for more than one year is required to be in writing. *Volkening v. Raymond* (1915), 91 Misc. 53, 154 N. Y. Supp. 145.

Oral contract to convey; consideration; partial performance.—Although the vendee of lands suing to enforce the specific performance of the vendor's oral contract to convey, establishes that he paid a portion of the consideration, the oral contract is unenforceable by reason of the Statute of Frauds. The payment of the

L. 1916, ch. 313.

Apportionment of rents, etc.

§§ 259, 275.

consideration for an oral contract to convey lands, standing alone, does not take the contract out of the statute; in addition to such payment the partial performance must be such that the party cannot be put in the same position as before, and the equitable rule contemplates some action on the part of the party himself from which he cannot recede without injury to himself and which cannot be compensated in damages. *Milholland v. Payne* (1915), 169 App. Div. 712, 155 N. Y. Supp. 773.

Written authority of agent.—One having no written authority to act as agent for a landlord cannot make a lease for five years. *Lawrence v. Goodstein* (1915), 91 Misc. 19, 154 N. Y. Supp. 229.

See generally *Nesbitt v. Thompson* (1916), 93 Misc. 251, 256, 157 N. Y. Supp. 166.

§ 259. When contract to lease or sell void.

Proof of title to right to operate oil-wells. *De Hart v. Enright* (1916), 93 Misc. 213, 157 N. Y. Supp. 46.

§ 275. Apportionment of rents, annuities, dividends and other payments.—

All rents reserved on any lease and all annuities, dividends and other payments of every description made payable or becoming due at fixed periods under any instrument shall be apportioned so that on the death of any person interested in such rents, annuities, dividends or other such payments, or in the estate or fund from or in respect to which the same issues or is derived, or on the determination or transfer by any other means of the interest of any such person, he, or his executors, administrators or assigns, and the person who thereupon becomes entitled to such rents, annuities, dividends or other payments or the estate or fund from or in respect of which the same issues or is derived, shall each be entitled to a proportion of such rents, annuities, dividends and other payments, according to the time which shall have elapsed from the commencement or last period of payment thereof to the time of such determination or transfer as the case may be, including the day of such death or of such determination or transfer, after making allowance and deductions on account of charges on such rents, annuities, dividends and other payments. If any such payment become due or be collected after such determination or transfer every such person or his executors, administrators or assigns shall have the same remedies at law and in equity for recovering such apportioned parts of such rents, annuities, dividends and other payments, when the entire amount of which such apportioned parts form part, becomes due and payable and not before, as he or they would have had for recovering and obtaining such entire rents, annuities, dividends and other payments, if entitled thereto; but the persons liable to pay rents reserved by any lease or demise, or the real property comprised therein shall not be resorted to for such apportioned parts, but the entire rents of which such apportioned parts form part must be collected and recovered by the person or persons who, but for this section, would have been entitled to the entire rents; and such portions shall be recoverable from such person or persons by the parties entitled to the same under this section. If any such payment shall have been collected before such determination or transfer, then the

§§ 291, 301.

Recording conveyances; acknowledgments.

L. 1916, ch. 395.

amount apportionable as herein provided shall be paid or allowed immediately, to the person entitled thereto, and may be recovered from the person who shall have collected the same. This section shall not apply to any case in which it shall be expressly stipulated that no apportionment be made, or to any sums made payable in policies of insurance of any description or under annuity contracts issued by life insurance companies. (*Added by L. 1916, ch. 313, in effect Apr. 25, 1916.*)

§ 291. Recording of conveyance.

Lease for a term exceeding three years; open possession of lessee under unrecorded lease; constructive notice to subsequent incumbrancer; foreclosure of subsequent mortgage; writ of assistance to eject lessee.—A lease for a term exceeding three years is a conveyance and must be recorded as required by the Real Property Law in order to be valid as against subsequent purchases in good faith and for a valuable consideration. But where a tenant is in open, visible and continuous possession under a lease for a term exceeding three years, one taking a subsequent mortgage upon the premises is charged with constructive notice of the prior lease, although it is not recorded, and is not an incumbrancer in good faith within the meaning of the Recording Act. Hence, under such circumstances, although a judgment of foreclosure of the subsequent mortgage, which was recorded, has been entered on a summons and complaint in which no personal claim was made against the lessee which was named defendant, the purchaser on foreclosure, or its grantee, is not entitled to a writ of assistance to eject the lessee from the premises. Moreover, the rights of the lessee as against the subsequent mortgagee under its prior unrecorded lease will not be determined upon affidavits in a summary proceeding for a writ of assistance. *City Bank of Bayonne v. Hocke* (1915), 168 App. Div. 83, 153 N. Y. Supp. 731.

See generally *Moore v. Le Maire* (1915), 169 App. Div. 154, 157, 154 N. Y. Supp. 822.

§ 301. Acknowledgments and proofs in foreign countries.—*Subd. 10 added by L. 1916, ch. 395, in effect May 2, 1916, as follows:*

10. If within the kingdom of Norway, Sweden or Denmark or if within any of their kingdoms, states, colonies, dependencies, territories, provinces, political subdivisions or dominions thereunto belonging, including Greenland and Iceland, it may be made before a judge or a clerk of a court of record therein under his hand and the seal of such court, or before the mayor or other chief magistrate of a city or town therein under his hand and the seal of such city or town, or before a notary public therein under his hand and the seal of his office and the seal of the city or town in which the notary resides, or before a sheriff therein, under his hand and the seal of the city or town in which the sheriff resides, or before a consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul, a deputy-consul, a consular agent, a vice-consular agent, a commercial agent or a vice-commercial agent, of either Norway, Sweden or Denmark accredited to the place in which the acknowledgment or proof is taken, and residing therein if under the hand and seal of his office or the seal of the consulate or legation to which he is attached.

L. 1916, ch. 143.

Registration of titles.

§§ 316, 332, 334, 371.

§ 316. Indexes.

Power of board of supervisors to contract with county clerk for reindexing of records.—*Wadsworth v. Board of Supervisors* (1916), 217 N. Y. 484:

§ 332. The record of certain conveyances validated.—The record made prior to January first, nineteen hundred and sixteen, in the county clerk's or register's office of any county in this state of any deed or mortgage or of any assignment or satisfaction piece of a mortgage otherwise authorized to be recorded therein when the acknowledgment or proof was taken in another county, notwithstanding the failure to append thereto a certificate as to the authority of the notary public, or other officer, who took the acknowledgment or proof, to take the same, shall be in all respects as valid and effectual as though such certificate had been appended to such instrument. Provided only that the notary public, or other officer, was duly authorized at the time of taking the proof or acknowledgment to take the same in the county where the instrument is recorded or in the county where the same was taken, but this section shall not affect any action or proceeding pending on January first, nineteen hundred and sixteen. (*Amended by L. 1916, ch. 365, in effect May 1, 1916.*)

§ 334. Maps to be filed; penalty for nonfiling.—It shall be the duty of every person or corporation who, as owner or agent, subdivides real property into lots, plots, blocks or sites, with or without streets, for the purpose of offering such lots, plots, blocks or sites for sale to the public, to cause a map thereof, together with a certificate of the surveyor or draughtsman attached showing the date of the completion of the survey and of the making of the map and the name of the subdivision as stated by the owner, to be filed in the office of the county clerk or register of deeds of the county where the property is situated prior to the offering of any such lots, plots, blocks or sites for sale. All such maps must be printed or drawn upon tracing cloth, linen or canvass backed paper. All of such maps shall be placed and kept, by some suitable method, in consecutive order and shall be consecutively numbered in the order of their filing and shall be indexed under the initial letters of all substantives in the title of the subdivision. A failure to file any such map as required by the provisions of this section shall subject the owner of such subdivision, or of the unsold lots therein, to a penalty to the people of the state of twenty-five dollars for each and every lot therein sold and conveyed by or for such owner prior to the due filing of such map. (*Added by L. 1910, ch. 415, and amended by L. 1916, ch. 143, in effect Apr. 6, 1916.*)

§ 371. Applications and proceedings to be in the supreme court; title part of special term.—The application for registration must be made to the supreme court; or to a justice thereof, sitting at a special term in any of the counties within the judicial department where the property is situated, and for that purpose said court shall be always open; and its orders, judgments

and decrees in cases coming under this article may be made and entered as well in vacation as in term time. The proceedings upon such applications shall have the effect of proceedings in rem against the land, and the judgments shall operate directly on the land and vest and establish title thereto. An issue raised in such a case shall be tried at a special term of said court, in the county in which the application is filed, by the court or a referee, except that an issue of fact may be tried by a jury, in the manner prescribed by the constitution and code of civil procedure. When in any county the amount of business under this article makes it necessary or proper that such business should be attended to by one or more justices of said court assigned for that purpose, the appellate division of the judicial department in which such county is situated shall designate as many justices as may be deemed necessary, to constitute the "title part" of the special term in that court; and said appellate division shall provide by rules of practice for the conduct, in said title part, of the business coming under this article in such county. Said appellate division may assign one or more additional justices to said "title part" of the special term, or withdraw one or more justices therefrom, as the business coming under this article may require and the availability of the supreme court justices make proper. One of the justices so assigned to the "title part" of the special term in any county shall be designated by said appellate division to have general supervision and control of the business coming under this article in that county; and so far as is reasonably possible, such designation shall remain unchanged, and such justice shall be retained continuously in such term and part during his term of office unless in the opinion of the appellate division a change is required for the better enforcement or working of this law. One and the same justice may be assigned so as to have such general supervision and control in two or more counties of the judicial district for which he is elected. Other duties may be assigned by such appellate division to such justice, provided that they do not interfere with his work in supervising and controlling the business coming under this article. The justice assigned, as herein provided, to have general supervision and control of the business coming under the article in any county, shall also have general supervision and control of all the official examiners within such county and it shall be his duty to observe and supervise their work as such official examiners, to advise them when necessary and to make any suggestions or recommendations to the appellate division with respect to discipline, suspension or removal of any of them as to him may seem necessary or proper in the interests of the successful operation of this law. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

Judgment may be entered on the decision of a referee where the issues have been referred to him "to hear and determine." *Jamieson & Bond Co. v. Reynolds* (1915), 169 App. Div. 107, 154 N. Y. Supp. 836.

§ 374. Deputy registrars' powers and duties.—In any county where the business under this article so requires, the registrar may appoint a chief

deputy and as many other deputies as are needed. But no one unless he is also a deputy register or an assistant deputy register appointed under statutory authority, or a deputy county clerk, shall be appointed as such deputy registrar unless he is an "official examiner of title" as described and required by section three hundred and seventy-seven of this chapter. Deputies may perform any and all duties of the registrar in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar, and in case of the death of the registrar, or his removal from office, the chief deputy shall thereupon become the acting registrar until such vacancy shall be filled according to law, and he shall file a like bond and be vested with the same powers and subject to the same responsibilities and entitled to the same compensation as in the case of the registrar. (*Amended by L. 1909, ch. 305, and L. 1916, ch. 547, in effect May 15, 1916.*)

§ 377: **Official examiners of title.**—Before application is made for the registration of a title, it must be thoroughly examined and certified by an "official examiner of title." A person duly admitted to practice as an attorney and counselor-at-law in the courts of record of this state, or a corporation duly incorporated under and by virtue of the laws of this state, and by said laws duly authorized to guarantee or insure titles to real property in this state, and no other person, corporation, or institution, may be admitted to the office or position of, and licensed to practice as, an official examiner of title. The court of appeals shall prescribe rules providing for the methods of ascertaining the fitness of individual applicants for license to practice as such examiners, and in doing so, shall take into account the length of time during which applicants have practiced law and the amount of work that they have done in the examination of titles to real property. In the case of experienced examiners of such titles, provision may be made for licensing them, without examination, to practice as "official examiners of title." After complying with the rules and requirements prescribed by the court of appeals pursuant to this section, an individual applicant may be licensed and admitted to practice as an official examiner of title in this state, by an order of the appellate division of the supreme court of the department in which he resides, or in which he has an office for the regular practice of law. He may be required to give such a bond as the court may prescribe. A corporation may be licensed and admitted to practice as an official examiner of title by an order of the appellate division of the supreme court of the department in which it has its principal place of business, which order shall be made on the certificate of the proper state official that such corporation is duly incorporated under and by virtue of the laws of this state, and by said laws authorized to guarantee or insure titles to real property within this state.

Any official examiner of title may base the report and affidavits required by this article, upon searches and abstracts of title made by a corporation duly organized under and by virtue of the laws of this state, and by said

laws duly authorized to make and to certify to searches and abstracts of title. The county clerk in any county, except in counties having a register, and in such counties the register may designate any deputy register, assistant deputy register or deputy county clerk appointed in his office under any provision of law to act as an official examiner of title in his county, or the county clerk or register may appoint one or more attorneys to act as official examiners of title in his county, provided, however, that any deputy or any other person so designated or appointed shall be an attorney and counselor-at-law and licensed to practice as an official examiner of title. The salaries of the official examiners of title designated or appointed by a county clerk or register, or their additional compensation for acting as official examiners of title beyond the salaries attaching to the office of deputy or assistant deputy, shall be fixed by the county clerk or register and shall be paid in the same manner as in the case of other employees of his office, subject to the audit of the local county or city authorities. The fees for all services rendered by such official examiner so designated or appointed by a county clerk or register shall be received by the county clerk or register and disposed of in the same manner as are other fees received by him.

In case no official examiner of title is designated or appointed in any county, the justice designated by the appellate division to have general supervision and control of the business coming under this article in that county may appoint a competent attorney to act as such official examiner of title upon such terms as may be just and determined by said justice. Any official examiner of title who is an attorney and counselor-at-law shall have power to sit as a referee and may administer oaths and examine witnesses and may at any time apply to the court for directions in any matters concerning his investigations. Said appellate division may advise, admonish, discipline, suspend or remove any official examiner, because of any dishonesty, incompetency, neglect of duty or any other improper conduct or omission, either on its own motion, or on the suggestion or recommendation of the justice of the supreme court having general supervision and control of the business coming under this law in the county in which such official examiner is appointed; and it shall be the duty of said appellate division to co-operate with such justice in endeavoring to retain the highest possible standard of ability, efficiency and honest service for all official examiners acting under and pursuant to this law.

No official examiner who has made the official examiner's report of title to be used in an action for the registration of such title shall act as attorney or counsel in such action, or be otherwise interested in such action. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 378. What owners may apply; what titles may be registered.—Application for registration of title may be made by the following persons:

First. The person or persons who claim, singly or collectively, to own

in fee simple the legal estate in land, or in some right in or over land, and who hold and possess such land or such right.

Second. The person or persons who claim, singly or collectively, to own a contract for the purchase in fee simple of the legal estate in land, or in some right in or over land, from the owner thereof, upon the duly acknowledged consent of the owner of the fee, which consent may be incorporated in the contract. Registration in the name of the holder of the contract shall not be made, except on the production of a proper transfer of title under and pursuant to the contract from a transferrer in possession, or the consent in writing, duly acknowledged, of the proposed vendor in possession and named in the contract and his wife, if he be married. Such transfer or consent may be made after the commencement of the registration proceedings or action.

Third. The person or persons who claim, singly or collectively to have the power of appointing or disposing in fee simple of the legal estate in land, or in some right in or over land.

No title to a mortgage, lien, trust, charge or estate less than a fee simple shall be registered, unless the title to the legal estate in fee simple in the same property is first registered. When the application is made by the holder of a contract to purchase, it shall refer to the ownership of the proposed vendor, and to the contract of purchase and sale.

It shall not be an objection to bringing real property under this article that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, trust, charge, or other lien or right. But any such lesser estate, mortgage, trust, charge, or other lien or right shall be duly noted on the certificate of title when issued. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 379. Contents of application for registration; other papers to be filed.—

The application for registration shall be made by filing a complaint, as required by section three hundred and seventy of this chapter. Except as otherwise specified herein, the complaint (and the summons in the action) shall name as parties to the action all persons having or claiming any right or interest in or lien upon the property, or any part thereof, as shown by the examiner's report of title hereinafter described; the owners in fee simple of the surrounding contiguous properties, so far as they are known or can be reasonably ascertained by inquiry on such property; the people of the state of New York; all persons who have filed any caution or cautions against the registration of such property as provided by section three hundred and eighty-three of this chapter, and such additional parties as may be designated by the court in its order directing the issuance and service of the summons; and it shall further designate and make parties to the action all other possible owners and claimants of the property or any right or interest in or lien upon the property or any part thereof "as all other persons, if any, having any right or interest in, or lien upon, the property

affected by this action, or any part thereof." The complaint and summons shall have the forms and effects prescribed for them by the code of civil procedure. The complaint shall set forth, in addition to any other proper allegations:

(a) The name and post-office address of each of the plaintiffs, and when made by one acting in behalf of another, the name, place of residence and street number, if any, and post-office address and capacity of the person so acting.

(b) Whether or not each of the plaintiffs (except in case of a corporation) is married, and, if married, the name, place of residence and street number, if any, and post-office address of the husband or wife, and, if unmarried, whether he or she has been married, and if he or she has been married, when and how the marriage relation terminated, and, if the marriage was terminated by annulment or divorce, when, where and by what court the annulment or divorce was granted, and for the misconduct, if any, of which party it was granted, and the nature of the misconduct, if any, for which it was granted.

(c) That each of the plaintiffs is of the full age of twenty-one years and free from any disability, or, if he is a minor or under disability, his age or the nature of such disability, and the authority of the person by whom his application is made.

(d) The complaint shall state what claim, if any, the state of New York makes to the property in question or what interest, if any, it has therein other than the general governmental interest or such as exists as to all land in private ownership.

(e) A proper reference to the official examiner's report of title; and to the survey, map or plan of the property; each of which is to be annexed as an exhibit to the complaint, and made and declared by the complaint to be a part thereof.

(f) A statement of the estate, interest or right claimed by the plaintiff in the property sought to be registered.

(g) A prayer that the title be duly registered, as belonging to and vested in the plaintiff or plaintiffs, or as the facts may require at the time of such registration, in the manner set forth in the said report of title or otherwise; and that the court may order the issuance of the summons and service of the summons and the proper notice, as hereinafter directed, on all the defendants who do not duly appear in the action.

The court may require additional facts to be stated in the complaint, and may require the filing of any additional paper or evidence. It may also require the complaint to be amended and reverified as the circumstances of the case may demand or make proper. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547, in effect May 15, 1916.*)

§ 380. Official examiner's report of title; other evidences of title.—The official examiner's report of the title referred to in section three hundred

and seventy-nine shall accompany the complaint as an exhibit, and be made a part thereof. An individual examiner, who makes the report, shall annex thereto his affidavit that the same is true in every particular, to the best of his knowledge and belief, and that he has employed all usual means and methods for ascertaining the truth thereof, and all the facts and circumstances affecting and concerning the title to said property. A corporate official examiner, that makes the report, shall annex thereto its policy of guarantee or insurance of the title as shown by the report, for an amount to be fixed by it and the plaintiff or plaintiffs, which amount shall not be less than the last valuation of the property or interest insured, for the purpose of local annual taxation, or its proper proportion thereof; which guarantee or insurance shall be made in favor of the plaintiff, and the people of the state of New York, and shall inure to the benefit of, and be recoverable upon, by any one who may be injured in any way within ten years after the filing of said policy of guarantee or insurance, because of any error, fraud, omission or misdescription in said report. Said official examiner's report shall set forth the exact state and condition of the title sought to be registered in the action, and the names, places of residence with street number, if any, and post-office addresses as far as known or reasonably ascertainable, and the rights or interests, or claimed rights or interests, of the plaintiff and all other persons having or claiming any rights or interests in or liens upon said property or any part thereof, and the names, places of residence with street number, if any, and post-office addresses of the owners in fee simple of the surrounding contiguous properties, as far as they are known or can be reasonably ascertained by inquiry on said properties; and, as to actual or possible owners or claimants of the property sought to be registered, not known or not found, it shall state fully what search and efforts have been made to find them. All possible owners and claimants of the property sought to be registered, or any right or interest therein or lien thereon, or in or on any part thereof, who cannot be otherwise described, shall be designated in the report, and in the summons and complaint, by the expression "all other persons, if any, having any right or interest in, or lien upon, the property affected by this action, or any part thereof." By the statements of fact contained in said report of title, or by separate accompanying affidavits, or by any other additional evidence, if necessary, stating the facts, or by any or all of these, sufficient facts must be shown to satisfy the court that all owners and claimants of the property sought to be registered, or of any right or interest in or lien upon the same or any part thereof, who could be found by diligent inquiry are duly and specifically named and made parties to the action. The question of the sufficiency of the proof that all such owners and claimants who could be found by diligent inquiry are duly and specifically named and made parties to the action shall be for the court; its decision that such proof is sufficient shall be shown by its making the order for the service of the summons and the commencement of the action as pre-

scribed in this article, and such decision or order shall not be drawn in question after six months from the time when the final judgment in the action is entered. There shall be filed, with said report of title, the abstract of title made or used by the official examiner. The examiner's report of title shall contain a short form of description of the property, the title to which is sought to be registered, which form is to be used in the notice to accompany and be served with the summons, as provided by section three hundred and eighty-six of this chapter. The court shall approve of such form before it is used in said notice and such approval shall be shown by the making of the order for the service of the summons and notice. Said examiner's report shall contain, or be accompanied by, any other or further information that the court may prescribe. The first part of said report shall be a summary of the results thereby shown, which summary shall briefly set forth the exact state of the title to said property. Said report shall be substantially in the form set out in section four hundred and thirty-four of this chapter, with such additions or modifications as the court may order. The examiner of title may receive in evidence and may base his report upon any official search or abstract or any search or abstract issued in regular course of business by any corporation duly organized under and by virtue of the laws of this state and by said laws duly authorized to make and to certify to searches and abstracts of title or to guarantee or insure title to real property in this state. It shall be the duty of any public official forthwith to certify the returns of any search upon the requisition of any official examiner of title. Where the title to the premises sought to be registered is in whole or in part the same as that of another parcel of land title to which has been registered, reference to the earlier abstract on file in the county in which the complaint is filed may be made by the official examiner in place of duplicating the matters therein contained. Reference to official searches duly filed in the county in which the complaint is filed may be made by the official examiner in place of duplicating the matters therein contained. The papers so referred to shall have the same effect as evidence and proof in the action as said official examiner's report of title, or said searches, as the case may be. Where the complaint seeks registration of a title subject to restrictive covenants or agreements, it shall not be necessary to join as defendants those persons who have or claim rights to enforce such covenants and agreements, but unless such persons are joined as defendants the judgment of registration must direct that title be registered subject to such covenants and agreements. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547, in effect May 15, 1916.*)

§ 381 Survey map, or plan to be filed.—There shall be filed with the complaint and annexed thereto as an exhibit and made a part thereof, the survey, map or plan of the land referred to in section three hundred and seventy-nine of this chapter, which shall be made by a competent surveyor

approved by the court, and which shall clearly show the exact boundaries of the land and its connection with adjacent lands and any adjoining or neighboring streets and avenues, and the distance from such adjoining or neighboring streets or avenues, and all encroachments, if any, and all other facts which are usually shown by accurate surveys. If any adjacent land is already registered, the survey so filed with the complaint must properly connect and harmonize with the survey of such previously registered land. There shall be attached to said survey, map, or plan, and filed with it, an affidavit of the surveyor by whom it was made, that it was made by him personally or under his immediate supervision and direction; that it is a survey, map or plan of the property described in the official examiner's report of title, and that according to the best of his knowledge and belief said property is included in the boundaries shown on such survey, map or plan, without any encroachments or improper erections, except as follows (stating and describing any encroachments or improper location of buildings, fences or other structures). (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 382. Notice of application and of pendency of action.—At the time when the application for registration of any property is filed, the plaintiff shall also cause to be filed a notice thereof in the office of the county clerk and registrar of each county where the property is situated, which notice shall be made and filed in the manner prescribed by section sixteen hundred and seventy of the code of civil procedure, and shall be indexed against the names of the plaintiff and all known defendants except the owners of abutting properties, and shall constitute notice of the pendency of the application, and of the action when the same is commenced, and shall be in all other respects the same as a notice of the pendency of an action under sections sixteen hundred and seventy to sixteen hundred and seventy-four inclusive of the code of civil procedure, except that, if the application be dismissed, or the action discontinued, or in any way terminated other than by registration of the title, no order for the cancellation of such notice shall be made by the court until it is duly and fully proved to the court that the provisions of section four hundred and ten of this chapter have been fully complied with and performed. The notice of pendency of action filed with the registrar, as provided in this section, shall also be noted on the "tickler certificate book" as if it were an application, and said notice shall be treated as, and take the place of, the application or complaint in all cases in which this act requires the registrar to deal with the application or complaint. In any place, however, where there is a block or lot system of indexing in use the said notice shall be indexed according to such system. The notice shall be substantially in the form provided by section three hundred and eighty-six of this chapter. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547, in effect May 15, 1916.*)

§ 383. Filing of caution.—Any person claiming to have any right or interest in or lien upon any real property or any part thereof the title to

which has not been registered, may file with the registrar a written notice, to be styled a "caution," that he requires written notice to be given to him of any application for the registration of the title of said real property. In such notice he shall show how he claims title, right, interest or lien, and shall give his own place of residence with street number, if any, and his post-office address, and that of a person (who may be himself or not), upon whom the notice may be served. In case of any application to register said title, service of such notice shall be made within ten days after the application is filed, by mailing said notice securely inclosed in a post-paid wrapper and directed to the person indicated at the place named. A like cautionary notice may be required by the owner of any land, as to the registration of the title of any or all of the land abutting upon his land, with the like proceedings in all respects. There shall be kept by the registrar a locality index of the cautionary notices, in which the same shall be indexed under the name of the street or road upon which the property referred to in the notice abuts, or if it abuts upon none, under the name of the street or road which is nearest to it. In any place, however, where there is a land map dividing the property into numbered blocks, the index shall be made by block numbers; and if any system of indexing by lot numbers is used, the index lot numbers shall be shown. Such caution shall not be notice, except in an action under this article. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547, in effect May 15, 1916.*)

§ 384. **Agent of nonresident applicant.**—If the applicant is not a resident of the state, he shall file with his application a paper appointing an agent residing in the state, giving his name in full, place of residence with street number, if any, and post-office address, and shall therein agree that the service of any legal process, in proceedings under or growing out of the application, shall be of the same legal effect, if made on the said agent, as if made on the applicant within the state. If the agent dies, or becomes incapacitated, or removes from the state, the applicant shall forthwith make another appointment; and if he fails to do so within a reasonable time, the court may dismiss the application. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 385. **Commencement of the action.**—On the complaint and all the other papers and documents filed in the making of the application for registration, the court shall determine whether or not the plaintiff appears to have a title that should be registered. For the purpose of arriving at such determination, the court may require a further examination of the title, to be made by the examiner who made the report, or by another official examiner, and it may also require a further or amended survey, or report, or additional affidavits, or any other proper evidence or proof. In all proceedings subsequent to the determination by the court that the plaintiff appears to have a title that should be registered, the allegations and statements of the examiner's report of title, and of his abstract and

searches, and in the survey, shall be prima facie and presumptive evidence of the facts so alleged and stated, and if any defendant controverts any allegation or statement contained in said report of title, abstract, or searches, or survey, the facts controverting such allegation or statement must be specifically pleaded and set forth in the answer separate and apart from the denials and allegations answering the complaint, and except as in this section otherwise provided must be established affirmatively by the defendant pleading or setting forth the same. The court may require, at any time, any amendment or modification of said official examiner's report, or any further or amended survey or report, or any additional evidence or proof that may be necessary or proper. All the allegations and statements in said report, abstract, searches and surveys shall be taken and construed as statements of fact, unless they are expressly declared therein to be conclusions or opinions. Where a party has controverted in his pleading specifically an allegation or statement contained in said report of title, abstract, searches or survey, any party who has appeared in person, or by attorney or counsel at the trial may require that the ordinary rules of evidence and proof, unaffected by this section, shall apply to the matter so controverted.

When the court is satisfied that the plaintiff appears to have a title that should be registered, it shall make an order directing that the action to register such title be commenced by the issuance of the summons, and the service of the summons and the notice required by section three hundred and eighty-six of this chapter. It shall be the duty of the court to make such order whenever it is satisfied that the plaintiff appears to have a title which is, or after proper proceedings in the action can be made free from reasonable doubt; and otherwise it shall be its duty to refuse to make such order. No omission or defect in any order directing an action to register a title to be commenced, or in the papers or proceedings upon or in which such order is made, shall deprive the court of jurisdiction to make such order, or of jurisdiction in the action, or in any way affect the court's jurisdiction. The summons shall name as defendants the persons so named in the title of the action as set forth in the order directing the commencement of the action and shall be made and have the form, and it and said notice shall be served in the manner prescribed by the code of civil procedure for a summons in an action in the supreme court; except that, when service is directed to be made by publication, it shall be ordered to be made in only one newspaper designated by the court once a week for four successive weeks, and such service so made shall be completed at the end of twenty-eight days from and including the day of the first publication; and except further that any defendant on whom personal service is made without the state pursuant to such an order shall appear, answer, or demur within twenty-eight days after such personal service; except further that an order for service of the summons and said notice shall be a court order, and the summons served pursuant thereto need not be accompanied

by any notice except that prescribed and required by section three hundred and eighty-six of this chapter; and except further as otherwise provided herein. Before making an order for service of the summons and said notice by publication or other form of substituted service, the court must be satisfied by proof of the facts that the plaintiff has been or will be unable, with due diligence, to make personal service of the summons. The question of the sufficiency of such proof shall be for the court; and an allegation, in an affidavit or other duly verified statement recited in said order, that the plaintiff has been or will be unable with due diligence to make personal service of the summons, or that after diligent inquiry a defendant remains unknown to the plaintiff or that the plaintiff is unable to ascertain whether the defendant is or is not a resident of the state, or that the plaintiff cannot, with reasonable diligence, ascertain a place or places where the defendant would probably receive matter transmitted through the post-office, may be taken to be sufficient proof thereof. An order containing such a recital, and made on such proof, shall not be drawn in question after six months from the time when the final judgment in the action is entered. The summons and such notice, the complaint, the official examiner's report of title and the abstract shall be served on the people of the state of New York; and such service may be made by mailing a copy of such summons and notice together with a copy of the complaint and of the official examiner's report of title and abstract securely inclosed in a postpaid wrapper and directed to the attorney-general of the state of New York. Upon and after the issuance of the summons, the court's jurisdiction shall be the same as in an action in the supreme court in which no order for the commencement of the action is required; and the action shall be governed by, and shall proceed according to, the laws of this state and the rules of court, relative to such an action, as far as the same are not expressly abrogated or modified by this article. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547, in effect May 15, 1916.*)

Failure to name former grantee as party defendant.—It is improper to register a land title in an action brought under article 12 of the Real Property Law, where a person to whom the record title in fee was formerly conveyed is not named as a party defendant, together with those claiming under her, except by an omnibus clause in the summons directed "to all persons, if any, having any right or interest in, or lien upon, the property" affected by the action. The name of the former grantee should appear so that her heirs, or those claiming under her, can intervene and contest the action. *Belmont Powell Holding Co. v. Serial Building, Loan and Sav. Inst.* (1915), 167 App. Div. 124, 152 N. Y. Supp. 868.

A summons in an action to register the title to certain real property, which does not contain the name of the holder of the record title, nor the heirs of such person, if any, is insufficient. Such persons are not included in the omnibus clause of the summons and complaint under the description "all other persons, if any, having any right or interest in or lien upon the property affected by this action or any part thereof." *Sherman v. Carman* (1915), 169 App. Div. 17, 154 N. Y. Supp. 484.

L. 1916, ch. 547.

Registration of titles.

§§ 386, 388.

§ 386. Notice of object of action; copy of complaint.—The summons, however served, shall be accompanied by a notice of object of action, which shall state the object of the action and describe briefly, but plainly, the property, the title to which is sought to be registered. Said notice shall be approved by the court, and a copy thereof shall be annexed to the order directing the service of the summons and said notice. Said notice shall be substantially as follows: “The object of this action is to register and confirm the title of (name or names and place of residence with street number, if any, and post-office address of plaintiff in full) in the following described property (description as approved by the court).” A copy of the complaint, but not of the official examiner’s report of title or abstract or other papers filed with the complaint and application, may be demanded by the attorney of any defendant, and if so demanded must be served, as prescribed by the code of civil procedure. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547, in effect May 15, 1916.*)

§ 388. Guardian ad litem.—In every action to register title, the court shall make an order appointing a disinterested attorney, other than the official examiner by whom the title was examined and reported and certified, to act as guardian ad litem for all minor parties to the action and for all other parties under disability. The application for the appointment of said guardian may be made by the plaintiff ex parte at any time after the time to answer of such of the defendants as are served personally has expired, and the service of the summons upon such of the defendants as are not served personally within this state is complete. The guardian ad litem thus appointed upon the application of the plaintiff shall be the attorney-general of the state of New York, unless it appears to the court that the state of New York has or claims some interest adverse to that of the person or persons for whom the attorney-general would thus be appointed guardian ad litem. The question as to the existence of such adverse claim or interest shall be for the court; and an order appointing the attorney-general as such guardian ad litem shall be sufficient proof that no such adverse claim or interest exists. Such an order shall not be drawn in question after six months from the time when the final judgment in action is entered. It shall be the duty of any such guardian ad litem actively to ascertain and protect as far as is reasonably possible, the interests of all minor parties to the action and all other parties under disability. The compensation of such guardian shall be fifteen dollars, unless the court direct otherwise; but the attorney-general shall not receive any compensation for acting as such guardian ad litem. Any other guardian ad litem may also be appointed in the manner set forth in the code of civil procedure for any of the defendants who are infants or persons incapacitated. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547, in effect May 15, 1916.*)

§ 390. **Title in lands vested; clouds thereon removed.**—In any action under this article, the court may find and decree in whom the title to or any right or interest in the property or any part thereof is vested, whether in the plaintiff or in any other person, and may remove clouds from the title, and may determine whether or not the same is subject to any lien or incumbrance, estate, right, trust or interest, and may declare and fix the same, and may direct the registrar to register such title, right, or interest, and in case the same is subject to any lien, incumbrance, estate, trust or interest, may give directions as to the manner and order in which the same shall appear upon the certificate of title to be issued by the registrar, and generally in such an action, the court may make any and all such orders and directions as shall be according to equity in the premises and in conformity to the principles of this article. But no judgment of registration of a title shall be made or entered until proof is duly made in the action by the report of an official examiner and by the certificate or receipt of the officer entitled to collect the taxes, assessments or water rents, and all taxes, water rents and assessments on the property, right or interest the title to which is so registered, have been fully paid and discharged, unless the court directs the title to be registered subject to any such tax, water rent or assessment, which said tax, water rent or assessment must then be noted on the certificate of title. Where the title to be registered is subject to restrictive covenants or agreements, and it shall appear to the court either that said restrictive covenants or agreements have been violated or that by reason of the proper parties not having been joined the court should not proceed to determine whether said restrictive covenants or agreements have or have not been violated, then in either case title may nevertheless be registered; but the judgment of registration must direct the registration to be “subject to any question as to whether covenants (specifying them) have been violated,” and the certificate of title shall so note; and then the rights in respect to such covenants of any person interested therein shall not be affected by such judgment or registration. When the land the title to which is to be registered abuts upon any street, avenue, road or way the judgment of registration may provide for the registration of the applicant’s interests or rights in and to such street, avenue, road or way; but if such judgment fail so to provide, then the interests or rights of the applicant in such street, avenue, road or way shall become and be parcel of or appurtenant to the property registered, and shall be included in any conveyance of or incumbrance or lien upon such registered property, unless it is expressly reserved in or excepted from such conveyance, incumbrance or lien. Such express reservation or exception shall be affected only by a clause directly reserving or excepting such interests or rights in such street, avenue, road or way and shall not be implied from the language used in any description of the registered property subsequent to the initial registration thereof. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547, in effect May 15, 1916.*)

L. 1916, ch. 547.

Registration of titles.

§§ 393, 394.

Error for Appellate Division to dismiss complaint where record shows title in plaintiff to a portion of land.—Since in an action to register title to land, the court may decree in whom the title to, or any right or interest in the property, or any part thereof, is vested, it is error for the Appellate Division to dismiss the complaint in such an action where the trial court might find from the record that the plaintiff had a marketable title to a portion of the land, title to which is sought to be registered. *Meighan v. Rohe* (1915), 216 N. Y. 677, mod. 166 App. Div. 175, 151 N. Y. Supp. 785.

An apparent cloud upon the title to real estate may be removed, in an action to register title, but a valid claim to such real estate cannot be extinguished or destroyed. *Sherman v. Carman* (1915), 169 App. Div. 17, 154 N. Y. Supp. 484.

Judgment on decision of referee.—Although this section provides that “no judgment of registration shall be made, unless the court is satisfied that the title to be registered accordingly is free from reasonable doubt,” this does not mean necessarily that the court itself must determine the issues raised by the pleadings, for such section of the statute provides that the issues shall be tried by the court or a referee. Hence, where the issues in an action to register title to real property have been referred to an official referee “to hear and determine” a judgment may be entered on his decision. *Jamieson & Bond Co. v. Reynolds* (1915), 169 App. Div. 107, 154 N. Y. Supp. 836.

§ 393. Registration of title.—Upon entering final judgment, a judgment roll must be prepared and filed in the office of the clerk, as provided by the code of civil procedure. The clerk upon payment of a fee of one dollar shall cause a copy of said judgment to be certified and transferred to the “registrar” of his county, who shall forthwith file the same in his office. After the certified copy of the final judgment directing registration of title is duly filed in the registrar’s office, the registrar shall proceed to register the title to the real property, estate, right, or interest, pursuant thereto, and issue a certificate or certificates thereof and enter the same as herein prescribed. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547, in effect May 15, 1916.*)

§ 394. Certificate of title.—The registrar shall make, in the form prescribed by section four hundred and thirty-five of this chapter, an original certificate of title of every title, right or interest registered by him pursuant to this article. Said certificate shall bear the date of its issue (the day and year), and be under the hand and official seal of the registrar, and be numbered in the order of its issue. Except in case of a corporation, it shall state whether the owner of the property, right, or interest registered is married or unmarried, and if married, the name of the husband or wife. If the owner is a minor, it shall state his age; if he is under any other disability, it will state the nature of such disability. The registrar shall make proper memorials or notations on the certificate, showing in such manner as to set forth and preserve their priorities, the particulars of all the estates, mortgages, trusts, liens and charges, to which such owner’s title is subject. No such memorial or notation shall be more than one folio (one hundred words), in length; but it may refer to covenants, restrictions, trusts and forms recorded in the “book of covenants, restrictions, trusts and forms” provided for by this article. The form of the first certificate

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L. 1916, ch. 547.

of title, as set forth in section four hundred and thirty-five of this article, shall be subject to such changes as may be required in any case. All subsequent certificates shall be in like form, except that in place of the words "first certificate," et cetera, shall be the words "transfer from number " (the number of the next previous certificate); also the words "first registered " (date of first registration). On the back or reverse side of every certificate shall be printed, in plain legible type, the whole of section four hundred of this chapter. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 395. **Title book.**—The registrar shall keep a book or books to be known respectively as the "title book," wherein he shall enter all first and subsequent "original" certificates of title by binding or recording them therein, with appropriate blanks for the entry of memorials and notations prescribed by this article. Said book shall be of about the size of the conveyance libers, now used in county clerks' and registers' offices. Each certificate shall constitute a separate leaf of such book. About two inches of each leaf on the binding edge shall be kept blank on both sides, to facilitate rebinding. At such times as may be proper, the registrar may rebind the certificates in new volumes or title books, containing respectively cancelled and uncanceled certificates. All memorials and notations, that may be entered in the title book under the terms of this article, shall be entered upon the leaf constituting the last certificate of title of the property to which they relate. Whenever the term "certificate of title" is used in this article it shall be deemed as including all memorials or notations thereupon noted. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 399. **Certificate of title as evidence.**—The certificate of title, and any copy thereof duly certified under the hand and seal of the registrar and the owner's duplicate certificate, until the expiration of the time herein limited to bring an action or proceeding to set aside the judgment of registration shall be received as evidence in all the courts of the state, and in all courts and places shall be prima facie evidence that the provisions of law up to the time of issue of such certificate or duplicate, or of the time of entry of the last memorial thereon, have been complied with, and that such certificate of title has been issued in compliance with a valid judgment, and that the title to the property is as therein stated; and after the expiration of such time limited for bringing said proceedings to set aside said judgment, such certificate or copy, up to the time of its issue, shall be so received as evidence in all courts of the state, and shall be conclusive evidence of the same facts. Every memorial or notation or cancellation thereof made on any certificate or duplicate or copy thereof shall be signed by the registrar or his deputy or his duly authorized deputy or clerk. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 400. **Rights of owners of registered property; exceptions; incumbrances and transfers to be filed.**—A person who receives a certificate of title pur-

L. 1916, ch. 547.

Registration of titles.

§§ 404, 407, 408.

suant to a judgment of registration, except in case of fraud to which he is a party, and a purchaser of registered real property, who takes a certificate of title for value and in good faith, shall hold the same free from all incumbrances, charges, trusts, liens and transfers, except those noted on the certificate in the registrar's office, and any of the following which may exist:

First. Liens, claims, or rights arising or existing under the laws or constitution of the United States, which the statutes of this state do not require to appear of record;

Second. Any tax, water rate, or assessment which becomes a lien on the property after initial registration and for which a sale has not been made;

Third. Any lease or agreement for a lease, made after or pending registration, for a period not exceeding one year, where there is actual occupation of the land under the lease or agreement;

Fourth. Easements or servitudes which accrue against the property after initial registration in such manner as not to require their registration.

Except as specified in the foregoing statement of exceptions, no incumbrance, charge, trust, lien, or transfer shall take effect upon or over real property the title to which has been registered, unless the instrument creating and setting forth such incumbrance, charge, trust, lien, or transfer has been filed with the registrar and a memorial or notation thereof made upon the certificate of title covering the property. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 404. **Registered property to remain registered.**—The bringing of property under this article shall imply an agreement, running with the land and binding upon the applicant and all his successors in interest or title, that the property shall be subject to the terms of this article, and all amendments and alterations thereof, and all dealings with the property so registered, or any estate, right or interest therein, after the same has been brought under this article, and all liens, incumbrances and charges upon the same after the first registration thereof shall be subject to the terms of this article. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 407. **Certificate as to part of property remaining after transfer.**—When only a part of the property described in a certificate is transferred, or some estate or interest therein is to remain the transferrer's, a new certificate shall be issued for such part, estate or interest so remaining and belonging to him; or if the property is so described as to permit it, the property transferred may be cancelled on the certificate of the transferrer without the issue of a new certificate for the residue. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 408. **Book of covenants, restrictions, trusts and forms.**—Each registrar shall provide a book to be known as the book of covenants, restrictions, trusts and forms. This book shall be bound in a substantial manner and

the pages thereof shall be Crane's parchment paper or its equal. Any person may have recorded in this book any covenant, restriction, trust or form he may present for that purpose on payment to the registrar at the rate of fifty cents per folio. The covenant, restriction, trust and form so entered shall be numbered consecutively and shall be written or typewritten in the book with India ink or other permanent ink in a clear and legible manner under the number given to it. References in any documents issued by the registrar to any covenant, restriction, trust or form recorded in this manner shall be as follows:

Subject to restriction, (or covenant, trust or form) recorded under number.....in the book of covenants, restrictions, trusts and forms, in the registrar's office of this county. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 409. Filing, entering and indexing papers pursuant to this act; tickler certificate.—Every paper filed with the registrar shall be given a serial number in the order of its filing, and then shall be entered by the registrar in an "entry book" under columns showing:

First. The serial number;

Second. Day of filing;

Third. Filing number of application (complaint) to which it relates if the registration proceedings are still pending;

Fourth. Certificate number, if registration proceedings are completed and certificate has been issued;

Fifth. Kind of paper filed;

Sixth. Name, place of residence with street number, if any, and post-office address of the person in whose interest the paper is filed.

Every paper filed with the registrar affecting property for which registration proceedings are pending shall be kept by the registrar with the application. The registrar shall provide a book to be known as "the tickler certificate book" wherein he shall note all filed papers affecting property for which registration proceedings are pending. Each page shall constitute a separate tickler certificate, and on said certificate he shall enter the character of the paper, the date of filing and the filing number. The tickler certificate, subject to such change as the case may require, shall be substantially as follows:

Application number.....

This certifies that the following papers have been filed in the office of the registrar of county affecting, or in connection with an action to register the title to the following described real property, to wit:

(The description to appear here.)

Character of paper	When filed	Filing number

§§ 413, 416, 417.

Registration of titles.

§§ 411, 412.

A memorial of every paper filed with the registrar affecting title to registered property shall be entered at once upon the last original certificate to which it relates. Every paper filed with the registrar affecting the title to property shall be indexed from its contents as follows: In an index showing in alphabetical order in one column or in a set of columns the names, places of residence with street numbers, if any, and post-office addresses of all persons in whose interest applications for registration of title are filed; the names, places of residence with street numbers, if any, and post-office addresses of all persons to whom any interest, right, or power in real property is granted or released; and the names, places of residence with street numbers, if any, and post-office addresses of all persons claiming an interest in real property; also, in separate columns the kinds of papers filed, the numbers of the filed papers, the dates of filing, the filing numbers of application to which they relate (if application is pending) and the numbers of the last original certificate to which they relate (if the title to the property is registered). Whenever a judgment or an order of court directs that the title to real property be registered, it shall also direct the registrar to transfer all proper liens and incumbrances filed against the property pending registration to the certificate of title so to be issued. In those counties which have block indexes, an index shall be kept by blocks of all owners of registered property with a reference to the certificate numbers in which the properties are registered. The registrar shall also keep an index of all properties registered under this article in which such registered properties shall be indexed according to a brief description thereof. In any place, however, where there is an official land map showing a division into blocks, such index shall be made according to block numbers; and if a system of indexing by lot numbers is used, the index lot numbers shall be shown. Such index shall also give the number of the certificate of title of such properties. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 411. **Addresses of interested parties; notice.**—On every paper or instrument filed with the registrar there shall be indorsed the name, place of residence with street number, if any, and post-office address of the person in whose behalf it is filed. The address may be changed from time to time, by such person filing with the registrar a written notice of such change. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 412. **When a transfer is deemed to be registered.**—Every transfer of registered property shall be deemed to be registered under this article when the new certificate to the transferee shall have been entered as in the case of first registration; and all other dealings shall be considered as registered when the memorial or notation shall have been entered in the title book upon the last certificate of title to the property. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 413. **New certificates of title.**—Upon the application of any owner of registered property held under one or more certificates of title and delivering up of such certificate or certificates, the registrar shall issue to such owner, at his option, separate certificates, each for a portion of such property in accordance with such application; and upon issuing any such certificate of title, said registrar shall indorse on the last previous certificate of such property so delivered up a memorial setting forth the occasion of the cancellation thereof and referring to the number or numbers of the new certificates of title so issued. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 416. **Proceedings to register mortgage, lease or other lien or charge.**—On the filing of the instrument in the registrar's office and the production of the duplicate certificate of title, if the interested parties agree in a statement as to the nature and effect of the mortgage, lease or other lien or charge, the registrar shall enter such statement upon the proper certificate in the title book, provided such statement be not more than one folio (one hundred words) in length, and also he shall enter upon the owner's certificate a memorial thereof and the date of filing the instrument with a reference to its file number, which memorial shall be signed by the registrar who shall deliver to the person filing such instrument a certified copy of such instrument certified to be the "registration copy." The registrar shall also note upon the instrument filed the number of the certificate on which the memorial is entered. If the parties in interest fail to agree upon the memorial so to be made by the registrar, he shall refuse to make any memorial thereof until directed by the court to do so, as herein provided. Any mortgage registered pursuant to this section shall be subject to the provisions of article eleven of the tax law (being chapter sixty-two of the laws of nineteen hundred and nine), and amendments thereof in the same manner as if said mortgage were recorded, as provided by section two hundred and fifty-three of said tax law. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547, in effect May 15, 1916.*)

§ 417. **Judgments, decrees, attachments and other liens to be noted on certificate.**—No judgment, decree, attachment, execution, mechanic's lien, or other lien or charge, which may affect or be a lien or charge upon real property in this state, shall be or become a lien or charge on real property, or any right or interest therein, the title to which has been registered, unless a transcript, or certified copy, or other duly made or certified document, which is by law proper evidence in a court of record, of such judgment, decree, attachment, mechanic's lien, or other lien or charge, shall be duly filed with the registrar, and a proper memorial thereof made by him upon the certificate of title in the title book. Such transcript, or certified copy, or other duly made or certified document so filed shall have plainly written or stamped thereon the number of the certificate of registration of the title to the property to be affected and bound thereby by virtue of such memorial

L. 1916, ch. 547.

Registration of titles.

§§ 418, 419, 420a.

on such certificate, and it shall be the duty of the registrar to make such memorial immediately on receipt of the same. A discharge, cancellation, or modification of any judgment, decree, attachment, mechanic's lien, or other lien or charge, so noted on the certificate, shall not affect or be binding upon the registered property, right, or interest, unless on like evidence a memorial thereof shall be made by the registrar on such certificate. (*Amended by L. 1916, ch. 547, in effect May 15, 1916*).

§ 418. **Assignment of mortgage, lease, or other lien or charge.**—The holder of any mortgage, lease, or other lien or charge on registered property, in order to transfer the same or any part thereof, shall execute an assignment of the whole or any part thereof; and upon such assignment being filed in the office of the registrar, and the production of the registration copy of the instrument, if any, which created the mortgage, lease or other lien or charge and which is held by the assignor, the registrar shall enter in the title book a memorial of such transfer with a reference to the assignment by its file number; he shall also note upon the instrument on file in his office intended to be transferred, and upon the registration copy thereof produced, the number of the certificate on which the memorial is entered, with the date of the entry. (*Amended by L. 1916, ch. 547, in effect May 15, 1916*.)

§ 419. **Release, discharge or surrender of charge or incumbrance.**—A release, discharge or surrender of a charge or incumbrance, or any part thereof, or of any part of the property charged or incumbered, may be effected in the same way as is above provided in the case of a transfer. In case only a part of the charge or only a part of the property charged is to be released, discharged or surrendered, the entry shall be made accordingly, but when the whole is released, discharged or surrendered, the registrar shall plainly stamp across the instrument on file, and on the memorial thereof, and on the registration copy produced, the word "cancelled," and shall sign the same. Any tax, water rent or assessment, subject to which the title has been registered and which has been noted on the certificate of title as provided in section three hundred and ninety of this chapter, may be released and discharged in the same way upon a receipt therefor being issued and duly certified by the receiver of taxes or collector of assessments and arrears or other duly authorized officer, as the case may require, and delivered to the registrar and filed in his office. The receiver of taxes or collector of assessments and arrears or such other duly authorized officer, as the case may require, upon demand of any owner of registered property, shall execute, certify and deliver to such owner such receipt when any such tax, water rent or assessment has been paid upon such registered property. (*Amended by L. 1916, ch. 547, in effect May 15, 1916*.)

§ 420-a. **Registration under judicial sales.**—Where a judgment or order in any action or proceeding directs or authorizes a sale of real property, the

§§ 421, 422.

Registration of titles.

L. 1916, ch. 547.

title to which is then a registered title, the officer appointed to conduct such sale shall be a person who is a duly qualified official examiner of titles, pursuant to the provisions of this article. It shall be the duty of such officer, prior to the date fixed by him for the sale of such property, to examine the title thereto in so far as it is affected by the action or proceeding in which such officer is appointed, and to prepare a report thereon, verified by him, stating his approval of such title or his objections thereto. At least one week prior to the day fixed for such sale, such officer shall serve a copy of such report on the attorney for the plaintiff, petitioner or applicant in such action or proceeding. Another copy of such report shall be delivered by such officer to the purchaser on such sale. If in such report such officer approve such title, then unless ten days before the date fixed by the terms of sale for the delivery of the deed the purchaser shall file with the clerk of the court directing such sale a notice that he intends to refuse to complete his purchase of such property, the officer shall apply forthwith to such court, without notice, for an order confirming such sale, and giving such directions to the registrar as may be necessary to enable such registrar to issue a due and proper certificate of title to the purchaser. Upon such application, the officer must submit to the court, to be filed with such order, the original of such report together with proof of service thereof upon such attorney and upon such purchaser, and also his proposed deed for the court's approval; and such approval if obtained shall be noted upon such deed by the court. The fees of such officer as now fixed by law shall be held to be full compensation to such officer, and no extra fees shall be allowed him for his services as official examiner under this section. The registrar upon production of a certified copy of the order approving the report of such officer and upon receiving the deed thus approved by the court, shall register the title in accordance with such order. (*Added by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 421. Powers of attorney to be filed and registered.—Before any person can convey, charge, incumber or otherwise deal with any registered property, or any estate, right or interest therein, as attorney in fact for another, the deed or instrument empowering him so to act shall be filed with the registrar and a memorial thereof shall be entered upon the certificate in the title book, in like manner as in the case of a charge or incumbrance. A revocation of such power of attorney may be registered in like manner as such power of attorney was registered. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 422. Reference of doubtful matters to the court.—When the registrar is in doubt, and the parties in interest fail to agree as to the proper memorial to be made in the title book of any deed, mortgage or other voluntary instrument presented for registration, the questions shall be referred to the court for decision, either on the certificate of the registrar stating the question, or upon the suggestion in writing of any party or parties in

L. 1916, ch. 547.

Registration of titles.

§§ 423, 424.

interest; and the court, after due notice to all parties in interest, and a hearing, if necessary or proper, shall enter an order prescribing the form of the memorial to be made by the registrar, who shall make the memorial accordingly. In any judicial proceeding affecting property, the title to which is then a registered title, the court upon the application in writing of any party or parties in interest after due notice to all other parties in interest and a hearing, if necessary or proper, shall enter an order prescribing the form of any memorial that should be made by the registrar in the title book because or as the result of such proceeding; and the registrar, upon the production of a certified copy of such order, shall make the proper memorial in accordance with such order. After making such memorial in the title book the registrar shall also make all other memorials on existing certificates or make and deliver any new certificates according to the circumstances and in the manner required herein. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 423. **Death of owner of registered property; transfer of property.**—Upon the death of an owner of registered real property or any estate, right, or interest therein, his heirs-at-law or devisees, at any time after the due entry of a decree of the surrogate's court, probating his will and granting letters testamentary thereon or granting letters of administration, or in case of an appeal from such decree at any time after the entry of a final decree, may make application to the court for an order directing the registrar in what manner the title shall be registered, and in whose name or names it shall be registered; and as to the new certificate or certificates to be issued thereon. Two or more heirs or devisees may unite in one such application. On such application the court, after due notice to all parties in interest and a hearing, if necessary or proper, may enter an order in accordance with said application. On such application the certificate of title of the deceased owner, or a duplicate copy thereof, shall be sufficient and conclusive evidence of his title at the time of his death, and no other evidence of the title up to that time may be produced. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 424. **Certificate of title during settlement of estate.**—Any new certificate of title, made and entered as prescribed in the preceding section before the final settlement in the surrogate's court of the personal estate of the deceased owner of the real property, shall state expressly that it is made and entered because of transfer of the title from the last certificate by descent or devise, and that such personal estate is in process of settlement. After the final settlement of such personal estate in the surrogate's court, or after the expiration of the time allowed by the code of civil procedure for bringing a proceeding for selling, mortgaging or leasing the real property of the deceased owner for the payment of his debts, the heirs-at-law or devisees may apply to the court in the registration action for an order directing the cancellation of said memorial upon the certificate,

which memorial showed that the personal estate was in the course of settlement, and the court, after being satisfied by due proof that said personal estate is completely settled or that said time to apply for selling, mortgaging or leasing the said real property has expired, shall make an order directing the cancellation of said memorial; but the liability of heirs or devisees of registered property, or of such property itself, for claims against the deceased or his estate shall not be in any way diminished or changed by this article. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 426. **Assurance fund.**—Upon the original registration of real property, there shall be paid to the registrar one-tenth of one per centum of the value thereof which value shall be determined by the registrar but shall not be less than the amount of the last assessment for local taxation. All moneys received by the registrar under the provisions of this section shall be paid to the treasurer of the county (in New York city to the city chamberlain), as an assurance fund for land registered in his county and shall be treated in the same manner as are other funds received for local taxation or for the reduction of the county or city debt. Said treasurer (or city chamberlain) shall keep a separate account of such funds and report annually thereon as required by law in reference to other funds in his hands. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 427. **Compensation from assurance fund.**—Any person who, without negligence on his part, sustains loss or damage or is deprived of real property, or of any estate, right or interest therein because of the registration of another person as owner of such property, or of any estate, right, or interest therein, through fraud, or in consequence of any error, omission, mistake or misdescription in any certificate of title or in any entry or memorial in the title book, shall have a cause of action against the county treasurer (in New York city the city chamberlain) to recover compensation for such loss or damage. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 428. **Action against assurance fund.**—Any allowed claim for indemnity shall be paid in the same manner as other claims against the county. In the city of New York a claim shall be passed upon and approved by the registrar and by the corporation counsel of the city before payment is allowed. The rejection of a claim by the proper county officials (or in the city of New York by the registrar and corporation counsel) shall not preclude the claimant from bringing an action to recover such claim. No claim or judgment on a claim for indemnity shall be binding on the county or on the county treasurer (in New York city the city chamberlain) for an amount exceeding the amount credited to the assurance fund. If the amount credited to the assurance fund is insufficient to pay the claim or judgment in full, the unpaid balance shall bear interest at the legal rate

L. 1916, ch. 547.

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§§ 429, 432.

and shall be paid out of the first moneys coming into said assurance fund. If any right of action against any person for damages for negligence or other cause, or under any covenant or contract of warranty or guaranty or otherwise, exists in favor of the person to whom indemnity is paid, the county treasurer (in New York city the city chamberlain) shall be deemed to be subrogated to such right and may bring an action to recover thereunder. Any amounts recovered by the county treasurer (in New York city the city chamberlain) under such an action shall be credited to the account of the assurance fund. Until the assurance fund provided as aforesaid shall have been exhausted, payment for any such losses or damages shall be made out of such fund. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 429. Restrictions on claims against assurance fund.—No person shall recover from the assurance fund any greater sum than the fair market value of the property at the time the right to bring such action first accrued. Any action or proceeding to recover damages out of the assurance fund shall be commenced within six years from the time when the right to begin the same accrued, and not afterward, and such time shall not be extended because of any disability. (*Amended by L. 1916, ch. 547, in effect May 15, 1916.*)

§ 432. Fees to be charged.—The following fees shall be charged by registrars for the various services performed pursuant to this article:

(a) Filing the notice of application, including entering it in the entry-book, indexing it, and entering it in the tickler certificate book, one dollar.

(b) Filing and indexing the judgment and issuing certificates of title in accordance therewith, and indexing same, five dollars.

(c) Entering, filing and indexing any lien, incumbrance or charge pending registration or subsequent thereto, one dollar.

(d) Entering, filing and indexing a deed or other paper requiring the cancellation of one certificate and the issue of another—for each new certificate issued, two dollars.

(e) Entering, filing and indexing any instrument cancelling any lien or incumbrance on a certificate, fifty cents.

(f) Making any additional certificate, fifty cents.

(g) Entering, filing and indexing a caution, one dollar.

(h) Services of the official examiner of title, when appointed by a register or county clerk, or by the court, one-tenth of one per centum of the value of the property, and ten dollars in addition thereto.

(i) Making, certifying and delivering a "registration copy" of any instrument, as provided by section four hundred and sixteen hereof, a fee computed at the same rate as the fees allowed by law for certifying a copy of a deed.

(j) Furnishing printed forms or for any services for which fees are not herein specified such reasonable charge as may be fixed by the registrar

subject to the revision of the court. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547, in effect May 15, 1916.*)

§ 434. **Form for official examiner's report of title.**—The examiner's report of title shall be substantially in the following form with such additions or modifications as may be necessary by reason of laws concerning records affecting the particular locality in which the property is situate and with such additions or modifications as the court may require or deem proper.

OFFICIAL EXAMINER'S REPORT OF TITLE.

State of New York, }
County of } day of, 19 ..

..... reports and certifies that title to the property herein described in this report is vested in
..... clear of all liens, incumbrances, defects, rights and interests, except as below noted. A full statement has been made of all liens, incumbrances, defects, rights and interests including restrictions, special agreements, covenants, easements, taxes, surveys, judgments, mortgages, and encroachments as they arise in the order of this report, which statement is found in the following pages of this schedule. A brief summary statement of the same is as follows (such summary to be here set out in the order of the paragraphs of this report):

The names and post-office addresses of all persons interested, or claiming to have any rights or interests in said property and the nature of their interests are as follows:

Names.	Post-office address.	Nature of interest.
.....
.....
.....

The names of the other persons interested, or claiming to have any rights or interests, in said property whose post-office addresses and whereabouts are unknown and cannot by diligent inquiry be ascertained are as follows:

Names.	Nature of interest.
.....
.....

The facts as to the inquiries and efforts made to find other persons having any rights or interests in said property and the diligence used to ascertain whether or not those known can be served personally with a summons within the state, are set forth in the following detailed statement:

DETAILED STATEMENTS.

1. Description. The following is an accurate diagram of the property proposed for registration in this action, the same having been copied from a survey made by dated

The above property is more particularly bounded and described as follows:

2. Records examined. Records necessary to determine the ownership of the above-described property and all liens and incumbrances have been examined in the offices of the register; clerk of the United States circuit court of the district; clerk of the United States district court of the district; United States loan commissioners; county clerk; tax collector; comptroller; county treasurer and (state here the other offices in which search has been made in addition to the above). The results of the examination of the records of the various offices above described are herewith set forth in detail separately. In case it has been found impossible to get necessary information to complete this certificate in any respect, a detailed statement has been given showing what efforts have been made.

3. Register's (or county clerk's) office. Search has been made against the following persons for the periods set opposite their respective names, for all conveyances, mortgages unsatisfied of record, assignments of unsatisfied mortgages returned hereon, leases and other instruments of record affecting said premises

A chain of title is given below. It also shows all agreements and instruments of record affecting said property. The special covenants and restrictions, unsatisfied mortgages and agreements appearing in said chain are set forth in detail after said chain of title together with all liens, incumbrances and defects in the register's (or county clerk's) office. (Here set forth chain of title, et cetera, as above.)

PARTICULARS OF EACH MORTGAGE UNSATISFIED.

Mortgagor,

Mortgagee,

Amount,

Dated,

Recorded,

Liber,; Page,; Sect.,; Block,

(Here set forth all assignments of said mortgage; also any objections to or defects in such assignments.)

4. United States circuit and district courts. Search has been made in

the United States circuit and district courts of the district for judgments and decrees as follows:

Names.	From.	To.
Upon such search the following unsatisfied judgments appear:		
.....		
.....		

Search has also been made in the United States district court of the district against all the names appearing in the register's (or county clerk's) search above for petitions in bankruptcy for the same periods as shown in register's (or county clerk's) search above so far as said periods fall within the times during which the bankruptcy acts of eighteen hundred and forty-one, eighteen hundred and sixty-seven and eighteen hundred and ninety-eight were in force.

Upon said search the following petitions appear:

.....

.....

5. Mortgages to the United States loan commissioners. Search has been made for such mortgages against all the names appearing in the register's (or county clerk's) search and for the same periods. Upon such search the following unsatisfied mortgages appear:

6. County clerk's office. Search has been made in this office for judgments, decrees and transcripts of judgments and decrees against the following names for the following periods:

Names.	From.	To.
.....		

Upon such search the following unsatisfied judgments are returned, the marginal notes showing what disposition has been made of them by the examiner:

Search has been made in this office for years last past for mechanics' liens affecting said premises. Upon such search the following unsatisfied mechanics' liens appear:

A search has been made against the persons named in the search in paragraph two and for the same periods for notices of lis pendens; certificates of sheriff's and marshal's sales; insolvent assignments; general assignments; foreclosure by advertisements; appointment of receivers; appointment of trustees, of absconding concealed nonresident or imprisoned debtors; exemptions under the homestead act. A further search for sher-

iff's certificates has been made against each owner for a period of eleven years subsequent to the search in the register's office and for foreclosure by advertisement to date. Such instruments and notices have been discovered as follows, the marginal notes showing what disposition has been made of them by the examiner:

7. Search has been made for one year last past in the register's (or county clerk's) office for chattel mortgages and conditional bills of sale affecting the premises. Upon such search the following unsatisfied mortgages and conditional bills of sale appear

8. Tax offices. Taxes, assessments and water rates unpaid are as follows:

Year.	Amount.
.....
.....

(State in detail all offices, local or otherwise, in which records of taxes, assessments or water rates are kept, in which searches have been made.)

Sales for taxes, assessments and water rates have been had as follows:

(State in detail offices in which searches have been made.)

To.	Date.
.....
.....

9. Here insert detailed statement of all searches for liens or incumbrances other than those above set forth

10. Other interested persons. The following persons who do not reside on the premises claim interests or rights in said property, the nature of their claim in law or equity being herewith set forth in detail:

Name.	Address.	Nature of claim.
.....
.....

The names and post-office addresses of the owners of the adjoining parcels of land are, as far as reasonably obtainable by inquiry on the premises, given below as shown in the diagram:

.....

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L. 1916, ch. 547.

11. Inspection of property. An inspection of the premises shows the property is occupied by the persons whose names and post-office addresses are set forth below; said occupants having described their interests and claims in said premises as follows:

Names.	Post-office address.	Nature of claim.
.....
.....

An inspection of the plumbing, drains and sewers shows the following easements:

.....

.....

An inspection of the walls, halls, roofs, yards and fire-escapes shows easements as follows:

.....

.....

12. Other matters which may or may not be of public record not included above and affecting said title are set forth as follows:

State of New York, }
County of, } ss.:

.....
being duly sworn, deposes and says that he is a duly qualified official examiner of title, licensed to practice as such under and by virtue of the laws of the state of New York; that he has personally examined the title to the property described in the foregoing report, and has made the foregoing report, and that the statements contained in said report are true in every particular to the best of his knowledge and belief; and that he has employed all usual means and methods for ascertaining the truth thereof and of all the facts and circumstances affecting and concerning the title to said property.

Sworn to before me, this
day of, 19..

.....
(Amended by L. 1910, ch. 627, and L. 1916, ch. 547, in effect May 15, 1916.)

§ 435. Form for certificate of title.—The registrar's certificate title shall be in the following form:

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No.

First registered

CERTIFICATE OF TITLE.

(First Certificate) or (Transfer from No.)

State of New York, }
County, } ss.:

.....
of (residence, and if a minor give his age; if under other disability, state the nature of the disability); married to (name of husband or wife, or if not married, say not married); is the owner of an estate in fee simple (or as the case may be) in the following land (here describe the premises) subject to the estates, easements, incumbrances and charges hereunder noted. (In case of trust, condition or limitation, say "in trust" or "upon condition" or "with limitation," as the case may be.)

Witness my hand and official seal this (date).

(Seal)

.....,
Registrar.

MEMORIALS

of estates, easements and charges on the land described in the above certificate of title.

Document number	Kind	Running in favor of	Terms	Date of registration	Signature of registrar

(Amended by L. 1916, ch. 547, in effect May 15, 1916.)

RELIGIOUS CORPORATIONS LAW.

(L. 1909, ch. 53.)

§ 7. Acquisition of property for cemetery purposes.

Negligence; failure to protect grave from violation.—A religious corporation which maintains a cemetery under the authority of this section is not liable in damages to the relatives of a decedent whose body was stolen from a grave in the cemetery by unknown persons, on the theory that it was negligent in failing properly to protect the grave. No such duty of protection is imposed upon the corporation in the absence of a statutory requirement or express contract to do so. *Coleman v. St. Michael's Protestant Episcopal Church* (1915), 170 App. Div. 658, 155 N. Y. Supp. 1036.

§ 12. Sale, mortgage and lease of property of religious corporations.

Proceeding to sell church property; stay.—Application was made for an order vacating a stay of proceedings instituted by a religious corporation for the purpose of selling church property. Two actions, one in ejectment, one in equity, are pending and involve the conflicting claims of the parties. Under all the circumstances, *held*, that the court should not vacate the stay, although circumstances may hereafter justify it in doing so. *Matter of Westminster Presbyterian Church* (1915), 168 App. Div. 823, 154 N. Y. Supp. 361.

§ 16. Property of extinct churches.—Such incorporated governing body may decide that a church, parish, or society in connection with it or over which it has ecclesiastical jurisdiction, has become extinct, if it has failed for two consecutive years next prior thereto, to maintain religious services according to the discipline, customs and usages of such governing body, or has had less than thirteen resident attending members paying annual pew rent, or making annual contribution toward its support, or in case of a parish of the Protestant Episcopal Church, if such parish has ceased for two consecutive years next prior thereto, to have a sufficient number of men qualified to elect or to serve as wardens and vestrymen therein, and may take possession of the temporalities and property belonging to such church, parish or religious society, and manage the same; or may, in pursuance of the provisions of law relating to the disposition of real property by religious corporations, sell or dispose of the same and apply the proceeds thereof to any of the purposes to which the property of such governing religious body is devoted, and it shall not divert such property to any other object. And for the purpose of obtaining a record title to the land and the church edifice, or other buildings thereon, by such incorporated governing body, the surviving trustee or trustees of said extinct church, or if there be no surviving trustee then a surviving member of said extinct church, may, without a consideration being paid therefor by such incorporated governing body, convey to it said land and church edifice, or other buildings thereon, subject, however, to an order of the supreme or county court based upon a petition reciting that said church has become extinct; the names of its surviving trustee or trustees,

and the names of its members, who must have given their consent to the making of said conveyance. Upon the recital of said facts in said petition the court shall have jurisdiction to grant an order allowing said conveyance to be made without a consideration; and should there be no surviving members, as well as no surviving trustee of said extinct church, said petition may be made by an officer of such incorporated governing body, in which event the court, upon a recital of said fact, shall have jurisdiction to appoint a suitable person as trustee for the purpose of making said conveyance. And in case of a Reformed Church of America, Dutch Reformed Church, or Reformed Dutch Church in the United States of America or the United Reformed Dutch and Lutheran Church of America should either such surviving members or such surviving trustee of said extinct church refuse to act and sign said petition after request by an officer of said governing body of said last-named churches personally made by such officer, then said petition may be made by an officer of such incorporated governing body and in that event the court shall have jurisdiction and may appoint a suitable person as trustee for the purpose of making said conveyance. And in the case of said last-named Reformed churches, the trustees of any such extinct church, the treasurer thereof or any person acting in either of said capacities may be required to show cause before the supreme court at a special term thereof held in the judicial district in which said church shall be located why they should not be required to give an account of all moneys and property of said church which they shall have in their hands or under their control and in case of their failure to show such cause they be required to account before said court for all the properties and moneys of the said church which shall be in their hands or under their control, and after the payment of all the claims against such church, if any, and the expenses of such proceeding, if it shall further appear that none of such property in the hands of said persons is required for the further support or maintenance of said church, said money and proceeds thereof shall be directed to be paid and turned over to said governing religious body to apply to the purposes to which the property of such governing body is devoted. An application for such order to show cause shall be made by a verified petition, which petition may be made by said governing body of said church or any officer thereof. Where a proceeding is instituted under this section for the sale of the real property of an extinct religious corporation, a compliance with subdivisions four, five, seven, eight and nine of section seventy-one of "An act relating to corporations generally, constituting chapter twenty-three of the consolidated laws," shall be unnecessary, and such proceedings shall be in all respects valid without a compliance with said subdivisions. The New York Eastern Christian Benevolent and Missionary Society, shall be deemed the governing religious body of any extinct or disbanded church of the christian denomination situated within the bounds of the New York Eastern Christian Con-

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Corporate meetings; voters.

L. 1916, ch. 210.

ference; and the New York Christian Association, of any other church of the christian denomination, and any other incorporated conference shall be deemed the governing religious body of any such church situated within its bounds. By christian denomination is meant only the denomination specially termed "christian," in which the bible is declared to be the only rule of faith, christian their only name, and christian character their only test of fellowship, and in which no form of baptism is made a test of christian character. (*Amended by L. 1909, ch. 480, L. 1910, ch. 185, and L. 1916, ch. 485, in effect May 9, 1916.*)

§ 195. **Organization and conduct of corporate meetings; qualification of voters thereat.**—At a corporate meeting of an incorporated church to which this article is applicable the following persons, and no others, shall be qualified voters, to wit: All persons of full age, who are then members in good and regular standing of such church by admission into full communion or membership therewith in accordance with the rules and regulations thereof, and of the governing ecclesiastical body, if any, of the denomination or order to which the church belongs, or who have been stated attendants on divine worship in such church and have regularly contributed to the financial support thereof during the year next preceding such meeting; and any incorporated church in connection with the Congregational denomination or with the denomination known as Disciples of Christ, or any other church incorporated under this article, may at any annual corporate meeting thereof, or any corporate meeting called pursuant to the provisions of this article, if notice of the intention so to do has been given with the notice of such meeting, determine that thereafter only members of such church shall be qualified voters at corporate meetings thereof. The presence at such meetings of at least six persons qualified to vote thereat shall be necessary to constitute a quorum. The action of the meeting upon any matter or question shall be decided by a majority of the qualified voters voting thereon, a quorum being present. The first named of the following persons who is present at such meeting shall preside thereat, to wit: The minister of such church, the officiating minister thereof; the officers thereof in the order of their age beginning with the oldest, any qualified voters elected therefor at the meeting. The presiding officer of the meeting shall receive the votes, be the judge of qualifications of voters and declare the result of the votes cast on any matter. The polls of an annual corporate meeting shall continue open for one hour, and longer in the discretion of the presiding officer, or if required by a majority of the qualified voters present. At each annual corporate meeting, successors to those trustees whose terms of office then expire, shall be elected from the qualified voters by ballot, for a term of three years thereafter; provided, however, that any Methodist Episcopal church in the boroughs of Brooklyn and Queens, in the city of New York, which is now or hereafter may become a beneficiary of the Brooklyn church society

L. 1916, ch. 450.

Transfer of church property.

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of the Methodist Episcopal church, by receiving from said society contributions to its current income, or by loan or gift from the same, may elect to fill any vacancy existing in its board of trustees by expiration of term, or for any other cause, at any corporate meeting legally called, not to exceed at any time three members of said board of trustees, who shall have been nominated to such positions by the Brooklyn church society of the Methodist Episcopal church, without regard to any qualifications for trustees required by this chapter, and such trustees or their successors, nominated and elected in the same manner, shall continue in office so long as said church shall be a beneficiary of said society. Notice of the expiration of term of said trustees shall be given by the said church to the said society not less than two months before said expiration of term. (*Amended by L. 1911, ch. 711, and L. 1916, ch. 210, in effect Apr. 15, 1916.*)

§ 206. **Transfer of church property.**—Any Church of Christ (Disciples) or Church of Christ (Disciples) religious societies becoming extinct or about to disband or disorganize may, by a vote of two-thirds of its members present and voting therefor at a meeting regularly called for that purpose assign, transfer, grant and convey, for a nominal consideration only, but subject to the debts, if any, of the church or society, all its property, both real and personal, to and place the same in the possession of the New York Christian Missionary Society existing under the laws of the state of New York. Any Church of Christ (Disciples) or Church of Christ (Disciples) religious society which has failed for two consecutive years next prior thereto to maintain religious services according to the custom and usages of Churches of Christ (Disciples), or has less than thirteen resident attending members, paying annual pew rental or making annual contributions towards its support, may be declared extinct in the following manner, to wit: Upon such notice as the court may prescribe, and upon application made by petition, stating fully the facts in the case, and on evidence being furnished that the said Church of Christ (Disciples) or Church of Christ (Disciples) religious society has ceased to hold religious services in and use its property for religious worship or service for a term of two years previous to such application, the supreme court at a term thereof held in the judicial district where such property is situated may grant an order declaring such church or society extinct, and thereon direct that all its property, both real and personal, shall be transferred to, and thereupon shall be taken possession of by the New York Christian Missionary Society of the state of New York, or directing that the same be sold in the manner directed by said order, and that the proceeds thereof, after the payment of the debts of such church or society, be paid over to the New York Christian Missionary Society of the state of New York. Such order shall operate to transfer the interest of such extinct church or society in such property or proceeds to

Code Crim. Pro. § 102.

Power of sheriff.

L. 1916, ch. 353.

such New York Christian Missionary Society. All property and proceeds from the sale of property so transferred to such association shall be used and applied for the purposes for which such New York Christian Missionary Society of the state of New York was organized and shall not be used for or applied to any other purpose. Nothing in this section, however, shall be construed to impair or in any way affect any existing claim upon or lien against any property so transferred or conveyed, or any action at law or legal proceeding. (*Added by L. 1916, ch. 450, in effect May 9, 1916.*)

RIOTS.

Code of Criminal Procedure.

§ 102. **Power of sheriff or other officer in overcoming resistance to process.**—When a sheriff or other public officer, authorized to execute process, has reason to apprehend that resistance is about to be made to the execution of the process, he may command as many male inhabitants of his county as he thinks proper, to assist him in overcoming the resistance, and, if necessary, in seizing, arresting and confining the resisters and their aiders and abettors, to be punished according to law. (*Amended by L. 1916, ch. 353, in effect May 1, 1916.*)

§ 105. **When governor to order out military force.**—*Repealed by L. 1916, ch. 353, in effect May 1, 1916.*

§§ 111–114. **Officers who may order out the military and effect of order.**—*Repealed by L. 1916, ch. 353, in effect May 1, 1916.*

RIVERHEAD.

Law Library; Education L., § 1182.

SARATOGA SPRINGS.

(B. C. & G.'s Consol L., vol. 4, p. 5279.)

L. 1909, ch. 569, §§ 1-5.—*As amended by L. 1911, ch. 394, §§ 1, 2, 3 and 5, and L. 1914, ch. 252, § 1, repealed by L. 1916, ch. 295, in effect Apr. 26, 1916.*

State reservation transferred to jurisdiction of Conservation Commission, Conservation L., §§ 2, 600–604.

SCHENECTADY.

L. 1916 ch. 603.—An act to create a commission to investigate and report upon the conditions relative to the construction of a highway bridge over the Mohawk river and the Barge canal between the city of Schenectady and the village of Scotia and making an appropriation therefor. (*In effect May 19, 1916.*)

§ 1. Within twenty days after the passage of this act the mayor of the city of Schenectady shall appoint one engineer not in the service of the

city of Schenectady, who together with the state engineer and surveyor shall constitute a commission for the purposes of this act, provided, however, that the state engineer and surveyor may, should he so determine, appoint an engineer, not in the service of the state, to act in his place as a member of such commission, and in such case the two engineers appointed shall constitute such commission.

§ 2. Such commission shall investigate the conditions relative to the construction of a concrete highway bridge with facilities for double track trolley lines over the Mohawk river and Barge canal between the foot of State street in the city of Schenectady and a point on Mohawk avenue in the village of Scotia about three hundred feet westerly from the junction of Schonowee avenue and Mohawk avenue in the village of Scotia, and flood conditions relating to the construction of such bridge. The said commission is hereby authorized to make or cause to be made surveys, borings, soundings, studies of flood conditions, plans and estimates of the cost of such concrete bridge including approaches and rights of way.

§ 3. Such commission shall, on or before the first day of September, nineteen hundred and sixteen, make a report in writing of its proceedings, including the result of its investigations, the surveys, borings and soundings, authorized by the preceding section, the proposed plans for such bridge, the estimates of cost and its recommendations as to the construction of such bridge and approaches, to the state superintendent of public works, the state engineer and surveyor, the mayor of the city of Schenectady and the president of the village of Scotia, and shall upon the convening of the legislature transmit a copy thereof to the legislature.

§ 4. In the event that the said two engineers shall not be able to agree upon any matter relative to their investigations or recommendations, they are hereby authorized and directed to appoint a third engineer who shall not be in the service of the state of New York or the city of Schenectady as a member of such commission, who shall have the same powers and duties as each of the other commissioners.

§ 5. The superintendent of public works, the state engineer and surveyor, and any other public officer or board shall not, pending the transmission of such report to the legislature and action by the legislature thereon, let any contract for, or proceed with any work in the matter of building a new bridge at or near the site of the present bridge or the reconstruction or remodeling of the existing bridge or make any changes therein, or providing a substitute therefor, other than such temporary alterations by Bascule type span, or otherwise, as may be found necessary to meet Barge canal requirements.

§ 6. The sum of five thousand dollars (\$5,000), or so much thereof as may be needed, is hereby appropriated for the purpose of carrying into

effect the provisions of this act, payable by the treasurer on the warrant of the comptroller, issued upon the certificate of the commission or a majority thereof, approved by the state superintendent of public works. The commissioner or commissioners other than the state engineer and surveyor shall be paid such compensation as shall be fixed by the state superintendent of public works, and in case of two or more commissioners, other than the state engineer, the compensation of such commissioners shall be equal and shall be within the amount available hereunder. Such compensation shall be fixed in advance and shall not be less than one thousand dollars for each commissioner other than the state engineer.

SECOND CLASS CITIES LAW.

(L. 1909, ch. 55.)

§ 14. Elections.

Power of Governor to call special election for supervisor.—The Governor is authorized in his discretion, under the provisions of section 292 of the Election Law, to proclaim a special election to fill the office of supervisor in wards of cities of the second class, where there has been a tie vote. The provision for appointment by the Mayor in case of a failure to elect does not, in view of the provisions of section 292 of the Election Law itself furnish an obstacle to the Governor's power to call a special election. Atty. Genl. Opin., 6 State Dep. Rep. 416 (1915).

§ 19. **Restrictions; officers not to be interested in contracts.**—No person shall, at the same time, hold more than one city office. Upon the acceptance by a city officer of a second office the office first held by him shall thereupon become vacant. No member of the common council or other officer or employee of the city, or person receiving a salary or compensation from funds appropriated by the city, shall be interested directly or indirectly in any contract to which the city is a party, either as principal, surety or otherwise; nor shall any such member of the common council, city officer or employee or person, or his partner, or any agent, servant, or employee of such officer, employee or person or of the firm of which he is a partner, purchase from or sell to the city, or any officer thereof, any real or personal property for the use of the city, or any board or officer thereof, nor shall he be interested, directly or indirectly, in any work to be performed for, or services rendered to or for it, or in any sale to or from said city, or to any officer, board or person in its behalf. Any contract made in violation of any of these provisions shall be void. A person shall not be deemed to be interested in a contract, purchase or sale made by a corporation with, from or to the city solely by reason of the fact that he is a stockholder or director of such corporation. The term "city officer" as used herein, however, shall not be deemed to include a commissioner of deeds. (*Amended by L. 1916, ch. 380, in effect May 1, 1916.*)

§ 30. Legislative power.

Power to make traffic regulations is vested exclusively in the common council. Hence, such regulations adopted by the commissioner of public safety are inadmissible in evidence. *Harding v. Cavanaugh* (1915), 91 Misc. 511, 155 N. Y. Supp. 374.

§ 78. **Temporary loans.**—In the interval between the beginning of the fiscal year and the adoption of the annual estimate the city shall have the power to borrow money to the extent required to pay fixed salaries, the principal and interest on bonded or funded debts or other loans, the stated compensation of officers and employees and indebtedness for work performed or materials furnished under contract with the board of contract and supply. After the adoption of said annual estimate it shall have the

§§ 120, 152, 184, 220, 244.

Contract and supply.

L. 1916, ch. 159.

power to borrow money for the payment of the debts and expenses of the city, within the amounts appropriated therefor for the fiscal year, in anticipation of the receipt of the said taxes and revenues applicable to such purposes. The common council may provide for the issue of certificates of indebtedness or revenue bonds, to be signed by the mayor and treasurer and countersigned by the comptroller, for such purposes, and, subject to the provisions of this section as to payment out of moneys received on account of taxes and revenues applicable thereto, may renew the same. Such certificates or bonds, or renewals thereof, together with interest thereon to date of maturity, shall be paid out of the moneys received on account of taxes and revenues applicable to such purposes. (*Amended by L. 1916, ch. 159, in effect Apr. 7, 1916.*)

§ 120. Board of contract and supply.

There is nothing inconsistent in the provision of chapter 137 of the Laws of 1842, which provides for the election of six commissioners of common schools in the city of Utica and defines their duties, with section 120 of the Second Class Cities Law which creates a board of contract and supply and defines the duties of the members thereof "except as otherwise provided by law," and a taxpayer's action will not lie to restrain the common school commissioners of said city from entering into a contract for the installation of a ventilating system in two of the city school buildings on the ground that the statute of 1842 was impliedly repealed by the Second Class Cities Law. *McBride v. Ashley* (1915), 91 Misc. 585, 154 N. Y. Supp. 1010.

§ 152. Actions to restrain nuisances.

Application.—The commissioner of public safety may bring and prosecute actions to restrain nuisances. *Hamlin v. Bender* (1915), 92 Misc. 16, 155 N. Y. Supp. 963.

§ 184. Police justice; further jurisdiction.

Jurisdiction of police justice of city of Troy to hear bastardy proceedings. *People ex rel. Lawton v. Snell* (1915), 168 App. Div. 410, 153 N. Y. Supp. 30.

§ 220. Annual dog license.

Action for injury to dog; pleading; condition subsequent.—The provision that an owner of a dog "who desires to maintain or preserve any right of property in such dog must procure yearly a license," is a condition subsequent to the bringing of an action for injury to a dog, and must be pleaded as a defense. It is improper practice for the attorney for the defendant in such an action to fail to raise the question under the statute until after the court has charged the jury. *Riniband v. Beiermeister* (1915), 168 App. Div. 596, 154 N. Y. Supp. 332.

§ 244. Liability of the city in certain actions.

Service of notice of claim; condition precedent; pleading.—When one is injured by slipping upon an icy sidewalk of a city of the second class, the service of a proper verified statement of his cause of action as required by this section is a condition precedent to the maintenance of an action to recover for such injuries, and merely filing with the clerk of the city and the corporation counsel a written notice of intention to commence an action is insufficient. The requirement that no action for damages or injuries to the person sustained solely or in consequence of the existence of snow or ice upon any sidewalk, crosswalk or street shall be maintained "unless written notice thereof relating to the particular place was

Housing Law.

L. 1913, ch. 774.

actually given to the commissioner of public works and there was a failure or neglect to cause said snow or ice to be removed, or the place otherwise made reasonably safe, within a reasonable time after the receipt of such notice," is an essential part of plaintiff's cause of action and compliance with the statute should be alleged and proved. Where the complaint alleges simply that defendant negligently and carelessly suffered and permitted the snow and ice upon which plaintiff fell to accumulate and freeze on the sidewalk, the action cannot be maintained it appearing that defendant was the owner of the lots in front of which the accident occurred. *Ryan v. City of Schenectady* (1915), 91 Misc. 296, 154 N. Y. Supp. 890.

Housing Law.

L. 1913, ch. 774 (B. C. & G.'s Consolidated Laws, Vol. 8, p. 2544). Repealed by L. 1915, ch. 32, § 9, Residence districts.

Eminent domain.—The provision for the designation of a residence district in cities of the second class in which no building other than a private dwelling, a two-family dwelling, etc., shall be erected, cannot be sustained as the proper exercise of the power of eminent domain, no provision being made therein for compensation to the owners of property taken, nor can it be sustained as an exercise of the police power. *People ex rel. Lankton v. Roberts* (1915), 90 Misc. 439, 153 N. Y. Supp. 143.

SECURED DEBTS.

Tax on; Tax L., §§ 330-340.

SEDUCTION.

See Penal L., § 2175.

SENATE.

Apportionment of districts; State L., § 120.

SLOT MACHINES.

Fraudulent acts relating to; Penal L., § 1293c.

SOLDIERS AND SAILORS.

Retirement and pension, Civil Service L., § 21a.
Relief; Poor L., § 81.

STALLIONS.

Licensing, Agricultural L., §§ 120-130.

STATE BOARDS AND COMMISSIONS LAW.

(L. 1909, ch. 56.)

Art. 6, §§ 55–56. Laws repealed; when to take effect.—*Renumbered Art. 7, §§ 70, 71 by L. 1916, ch. 506, in effect May 11, 1916.*

ARTICLE VI.

(Article added by L. 1916, ch. 506, in effect May 11, 1916.)

THE INTERSTATE BRIDGE COMMISSION.

- Section 55. Interstate bridge commission created.
 56. Acquisition of bridges by agreement.
 57. Bridges, how acquired when not purchased.
 58. Proceedings for acquisition of bridges by condemnation.
 59. Idem; report of commissioners; confirmation; appeals.
 60. Costs.
 61. Management of bridges; tolls abolished, et cetera.
 62. Expense of acquisition; one-half to be borne by this state.
 63. Expense of maintenance a joint charge.

§ 55. Interstate bridge commission created.—The state engineer and surveyor, the superintendent of public works and the state highway commissioner shall constitute the interstate bridge commission hereby created. Such commission shall, together with a similar board or commission from the state of Pennsylvania, constitute a joint commission to acquire the rights, franchises and property of the several bridge corporations, municipal corporations, companies, partnerships or individuals owning or operating toll bridges and including the bridge at Pond Eddy in the town of Lumberland, Sullivan county, owned by said town across the Delaware river between the state of New York and the state of Pennsylvania, except such as are owned by steam or electric railroads or railways and used exclusively for railroad or railway purposes. Such acquisition shall be either by purchase or to be had and effected by this state and the state of Pennsylvania under and by virtue of their respective rights of eminent domain, this state to pay one-half of the cost of the said bridges and one-half of the cost of acquiring them, and the other half of the cost of the said bridges and one-half of the cost of acquiring them to be paid by the state of Pennsylvania, or in lieu thereof, in proportion between the state of Pennsylvania and the counties and municipalities thereof as the latter state may be appropriate legislation determine. (*Added by L. 1916, ch. 506, in effect May 11, 1916.*)

§ 56. Acquisition of bridges by agreement.—Such joint commission shall, in its discretion, determine the order in which the several bridge properties, rights and franchises shall be acquired by purchase or condemnation, subject, however, to the amount of the appropriation by the respective

state available for such purposes, preference being given to those who, in order of time, shall voluntarily agree with the joint commission upon the purchase price. After the said joint commission shall have acquired the properties, rights and franchises of and in all the bridge corporations, municipal corporations, companies, partnerships or individuals as have so agreed with them upon the purchase price thereof and payment has been made for the same in the manner hereinafter set forth, the said joint commission shall cause personal notice in writing to be served upon the president, secretary or treasurer of each of the bridge corporations, members of the companies or partnerships, individuals and chief executive officer of each of the municipal corporations, which have theretofore failed to agree to sell their rights, properties and franchises or refused to sell the same at a price offered by the said joint commission, setting forth their intention to begin condemnation proceedings under the power of eminent domain, as set forth in this article. (*Added by L. 1916, ch. 506, in effect May 11, 1916.*)

§ 57. **Bridges, how acquired when not purchased.**—It shall be the duty of the joint commission to determine in which state the condemnation proceedings shall be instituted and proceeded with, and in case the said proceedings shall be instituted in this state they shall be proceeded with in accordance with sections fifty-eight and fifty-nine of this article. (*Added by L. 1916, ch. 506, in effect May 11, 1916.*)

§ 58. **Proceedings for acquisition of bridges by condemnation.**—In case the purchase price has not been agreed upon between the joint commission and any of such bridge corporations, municipal corporation, companies, partnerships or individuals, the supreme court in the judicial district in which the bridges or any one of them so about to be taken shall be situated, without any bond being required to be filed, on application thereto by the attorney-general or of any bridge corporation, municipal corporation, company, partnership or persons interested, shall appoint three discreet and disinterested freeholders, none of whom shall be a resident of the county in which the bridge is situated, as commissioners of appraisal and appoint a time not less than twenty nor more than thirty days thereafter when the said commissioners shall meet upon the property and view the same and the premises affected thereby. The said commissioners shall give at least ten days' personal notice of the time and place of the first meeting to the attorney-general and to the president, secretary or treasurer of the bridge corporation, members of the company or partnership affected, individual owning such bridge, or executive officer of such municipal corporation, if any of the aforesaid officers or persons so to be notified reside in the county in which said bridge is located, otherwise by advertisement for three consecutive weeks in two newspapers published in the said county and by hand bills posted upon the premises or by such other notice as the court shall direct. The said commissioners having been duly sworn or affirmed

faithfully, justly and impartially to decide and true report make concerning the value of the property and franchises so taken, which shall be submitted to them, and in relation to which they are authorized to inquire under the provisions of this article, and having viewed the premises or examined the property, shall hear all parties interested and their witnesses and shall estimate the damage for property taken, injured or destroyed, with all the rights, property and franchises appertaining to the same, and to whom damages are payable. They shall give at least ten days' notice thereof in the manner herein provided to the attorney-general and to the president, secretary or treasurer of the bridge corporation, members of company or partnership affected, individual owning such bridge, or executive officer of such municipal corporation, of the time and place when said commissioners will meet and exhibit their report and hear all exceptions thereto. After making whatever changes are deemed necessary, the said commissioners shall make report to the court, showing the damages, and file therewith a plan showing the location of said bridge or bridges so taken and the name of the corporation, company, partnership or person to whom such damages are payable. (*Added by L. 1916, ch. 506, in effect May 11, 1916.*)

§ 59. *Idem*; report of commissioners; confirmation; appeals.—Upon the report of said commissioners or any two of them being filed in said court, either the state or the corporation, company, partnership or persons owning said bridge or bridges, or any party interested, may, within thirty days thereafter, file exceptions to the same and the court shall have power to confirm said report or to modify, change or otherwise correct the same or refer the same back to the same or new commissioners with like powers as to their report; or, within thirty days from the filing of any report or the final action of the court upon the exceptions, any corporation, company or partnership whose property is taken, or the state or any person interested, may appeal and demand a trial by jury, and any corporation, company, partnership, person or party interested therein, or the state, may, within thirty days after final decree, take an appeal to appellate division of the supreme court. If no exceptions are filed or demands made for trial by jury within the said period of thirty days after the filing of said report, the same shall become absolute. The said supreme court at special terms, shall have power to order what notices shall be given in connection with any part of said proceedings and may make all such orders as it may deem requisite. (*Added by L. 1916, ch. 506, in effect May 11, 1916.*)

§ 60. *Costs*.—The costs of the commissioners and all court costs, including advertisements, incurred in the proceedings aforesaid, shall be defrayed by the state. (*Added by L. 1916, ch. 506, in effect May 11, 1916.*)

§ 61. *Management of bridges; tolls abolished; et cetera*.—Upon and immediately after the purchase or final proceedings in condemnation, as the

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case may be, the said bridge or bridges shall become the sole property of the several states, in the proportion aforesaid, and the toll charges thereof shall cease, and said bridge or bridges shall be free to the traveling public under such rules and regulations as may be prescribed by the said joint commission. The damages shall be appraised as of the date upon which the collection of tolls shall cease, with interest thereon at the rate of five per centum during the time an appeal from the appraisal thereof is pending and until the same or the purchase price thereof has been paid, provided that any steam or passenger railroad or railway now having the use and occupation of any such toll bridge under a lease or agreement with any corporation, company, partnership or person owning such bridge shall pay to this state and to the state of Pennsylvania, in equal proportion, the same rental, interest and charges, and in the same manner and proportions as they now pay the said bridge corporation or corporations, companies, partnerships or owners as aforesaid. Provided, further, that any steam or electric railroad or railway corporation holding in whole or in part, in conjunction with a bridge corporation, company, partnership or individual, any bridge over the said river, upon which tolls are now collected or charged, shall be entitled to compensation to be agreed upon or ascertained as damages in the manner aforesaid in proportion as their interests may appear to and in the value of the bridge or bridges as a toll bridge or bridges only, and exclusive of its value as a railroad or railway bridge, and said bridge or bridges shall remain the property of the railroad or railway corporations, but toll charges thereon shall cease as heretofore provided in this section. (*Added by L. 1916, ch. 506, in effect May 11, 1916.*)

§ 62. **Expense of acquisition; one-half to be borne by this state.**—The one-half cost of the purchase price or of the damages under condemnation proceedings of all bridge properties, rights or franchises, or interests therein, acquired by the states of New York and Pennsylvania, in the manner above set forth, shall be paid by the state treasurer of the state of New York, upon the warrant of the comptroller, for its proportionate share of the amount due from this state to the corporation or corporations, company or companies, partnership or partnerships, or proper person or persons, as their interests may appear, upon vouchers audited by the interstate bridge commission of this state. (*Added by L. 1916, ch. 506, in effect May 11, 1916.*)

§ 63. **Expense of maintenance a joint charge.**—Upon the acquisition as aforesaid by this state jointly with the state of Pennsylvania of the bridge properties, rights and franchises, as hereinbefore provided, such bridge or bridges, except in the case of railroad or railway bridges as hereinbefore provided, shall be and remain in the charge and custody of the said joint commission, and such bridges and the immediate approaches thereto shall be maintained jointly by this state and the state of Pennsylvania in equal proportions, and shall be kept in constant repair and rebuilt when de-

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Interstate bridge commission.

L. 1916, ch. 506.

stroyed, and the expense thereof and therefor shall be paid as are other expenses incident to the maintenance of property in the charge and custody of the said state; provided that appropriate concurrent legislation for the same purpose be enacted by the state of Pennsylvania. (*Added by L. 1916, ch. 506, in effect May 11, 1916.*)

L. 1916, ch. 118.

Fiscal year

§§ 44, 45, 48, 65, 66.

STATE CHARITIES LAW.

(L. 1909, ch. 57.)

§ 44. Fiscal year.—*Amended by L. 1909, ch. 149 and L. 1911, ch. 405, and repealed by L. 1916, ch. 118, § 5, in effect Apr. 3, 1916.*

§ 45. Quarterly estimates of expenses; contingent fund.

Maintenance of families of officers and employees.—The families of the officers and employees of charitable institutions, except those of the superintendents, medical officers, adjutants, quartermasters and stewards, are required to pay for their maintenance. Atty. Genl. Opin. (1915), 4 State Dep. Rep. 519.

§ 48. Purchases.

The term "responsible" referring to bidders, is not limited to financial responsibility only, but is used in a much broader sense. Atty. Genl. Opin. (1915), 4 State Dep. Rep. 573.

Cancellation of contract for incandescent lamps found to be inefficient, may be ordered, although no notice was given to the contractor of a test for determining the efficiency. Atty. Genl. Opin. (1915), 4 State Dep. Rep. 573.

§ 65. Duties of superintendent.—*Subd. 7, amended by L. 1916, ch. 118, § 6, in effect Apr. 3, 1916, as follows:*

7. See that such accounts and records shall be fully made up to the first days of January and July in each year, and that the principal effects and results, with his report thereon, be presented to the board at its next meeting;

§ 66. Duties of treasurer.—*Subd. 3, amended by L. 1916, ch. 118, § 7, in effect Apr. 3, 1916, as follows:*

3. Balance all the accounts on his book on the first day of each July, and make a statement thereof, and an abstract of all the receipts and payments of the past year; and, within three days thereafter, deliver the same to the auditing committee of the managers, who shall compare the same with his books and vouchers, and verify the same by a further comparison with the books of the superintendent, and certify the correctness thereof to the managers at their annual meeting;

§ 95. Detention and discharge of inmates.—*Subd. 11, added by L. 1916, ch. 71, in effect Mch. 22, 1916, as follows:*

11. When desirable for the best interests of the state, as well as the wards thereof, the superintendent, subject to the approval of the board of managers, may grant to groups of inmates in colonies on rented premises or on land owned by the state, parole or leave of absence to do domestic work under the direction of the superintendent, or agricultural work under direction of the state department of agriculture, or reforestation and forestry work under the direction of the conservation commission, and any expense connected therewith shall be a charge upon the regular maintenance of the asylum.

§§ 108, 132, 158.

Fiscal year

L. 1916, ch. 118.

§ 108. Duties of agent in the capacity of treasurer.—*Subd. 3, amended by L. 1916, ch. 118, § 8, in effect Apr. 3, 1916, as follows:*

3. Balance all the accounts on his books on the first day of each July, and make a statement thereof, and an abstract of all the receipts and payments of the past year; and within five days thereafter deliver the same to the auditing committee of the managers, who shall compare the same with his books and vouchers, and verify the same by a comparison with the books of the superintendent, and certify the correctness thereof to the managers at their annual meeting.

§ 132. Powers and duties of board of managers.—*Subd. 3, amended by L. 1916, ch. 118, § 9, in effect Apr. 3, 1916, as follows:*

3. Make a detailed report to the legislature on or before the fifteenth day of January in each year, with recommendations as said managers may deem expedient, together with a statement of all moneys received by them and of the progress made in the erection of buildings for hospital purposes, if any, for the year ending on the thirtieth day of June preceding the date of such report.

§ 134. Powers and duties of treasurer.—*Former § 135 renumbered by L. 1910, ch. 449, § 10. Subd. 3, amended by L. 1916, ch. 118, § 10, in effect Apr. 3, 1916, as follows:*

3. Balance all accounts on his books annually on the last day of June and make a statement thereof and an abstract of the receipts and payments of the past year, and deliver the same within thirty days to the auditing committee of the managers who shall compare the same with the books and vouchers and verify the results upon further comparison with the books of the steward and certify to the correctness thereof to the managers at their next meeting.

§ 158. Duties of treasurer.—*Subd. 3, amended by L. 1916, ch. 118, § 11, in effect Apr. 3, 1916, as follows:*

3. Balance all the accounts on his books on the first day of each July, and make a statement thereof, and an abstract of all the receipts and payments of the past fiscal year; and within five days thereafter deliver the same to the auditing committee of the trustees, who shall compare the same with his books and vouchers, and verify the same by a comparison with the books of the superintendent, and certify the correctness thereof to the trustees at their next meeting.

§ 222. General powers and duties of managers.

Committing magistrate member of parol board.—A judge or magistrate who has committed a female to the State Reformatory for women at Bedford, when he so requests in writing, shall become a member of the Board in considering or determining the manner of parol or discharge of any women committed by him. Atty. Genl. Opin., 4 State Dep. Rep. 511 (1915).

§ 231. Detention and rearrest in case of escapes.

Parol of inmates from the State Reformatory for women at Bedford should be limited to the State of New York. Atty. Genl. Opin., 4 State Dep. Rep. 511 (1915).

§ 346. Commitment; certificate; term.

A woman incompetent to manage her affairs because of habitual drunkenness may be dealt with under this section. People ex rel. Olin v. Warden of District Prison (1915), 170 App. Div. 289, 155 N. Y. Supp. 905.

STATE FINANCE LAW.

(L. 1909, ch. 58.)

§ 2. **Fiscal year.**—The fiscal year of all offices, asylums, hospitals, charitable and reformatory institutions in this state shall begin with the first day of July and end with the next following thirtieth day of June. All books and accounts in the offices of the comptroller and treasurer shall be kept by fiscal years. All annual accounts required to be rendered to the comptroller or treasurer by any person shall be closed on the thirtieth day of June in each year, and rendered as soon thereafter as practicable, if no time is specially prescribed by law. The first fiscal year under this section as hereby amended shall begin on the first day of July, nineteen hundred and sixteen; and the current fiscal year is hereby abridged, to end on the thirtieth day of June in such year.

Where any statute provides, in terms or effect, that any inventory or account, or a report relating in whole or in part to receipts and disbursements of money, be made to the legislature or any state officer annually, or for a year, by a board, commission or officer under the state government, such inventory or account, and such report so far as it relates to such receipts and disbursements, shall be for the preceding fiscal year, unless the calendar year be expressly mentioned. (*Amended by L. 1916, ch. 118, § 1, in effect Apr. 3, 1916.*)

§ 4. **Duties of comptroller.**—*Subd. 6, amended by L. 1916, ch. 118, § 2, in effect Apr. 3, 1916, as follows:*

6. Make a report to the legislature at its annual session, containing a complete statement of the funds of the state, its resources and public expenditures during the preceding fiscal year, a statement of each object of expenditure, the funds, if any, from which it is to be defrayed, and a statement of all claims against the state presented to him where no provision or an insufficient provision for the payment thereof has been made by law, with the facts relating thereto and his opinion thereon, and suggesting plans for the improvement and management of the public resources, and containing such other information and recommendations relating to the fiscal affairs of the state, as in his judgment should be communicated to the legislature. He shall also report to the legislature on or before February first in each year the expenditures, except for construction work and permanent betterments, of each state department, commission, board, bureau, office and institution, for the first six months of the then current fiscal year.

Securities are not paid into court as trust funds under subdivision 8, where they have been delivered to a county treasurer, until the committee of an incompetent shall qualify. Atty. Genl. Opin., 5 State Dep. Rep. 459 (1915).

§ 16. **Accounts and contracts.**

Authorization of work without contract.—Neither the principal of a normal school

L. 1916, ch. 118.

Accounts of public officers; inventory.

§§ 17, 20.

nor the Department of Education is authorized to cause work upon a school building in excess of \$1,000 to be done without contract. Atty. Genl. Opin., 5 State Dep. Rep. 488 (1915).

§ 17. **Itemized and monthly accounts of public officers.**—The proper officer of each state hospital, asylum, charitable or reformatory institution, the state hospital commission, the state board of charities, the state board of health, the conservation commission and all other state commissions, commissioners and boards, shall, on or before the fifteenth day of each month, render to the comptroller a detailed and itemized account of all receipts and expenditures of such hospital, asylum, institution, commission, or board of commissioners during the month next preceding. Such account shall give in detail the source of all receipts, including the sums received from any county, and to be accompanied by original and proper vouchers for all funds paid from the state treasury, unless such vouchers have been previously filed with the comptroller and have appended or annexed thereto the affidavit of the officer making the same to the effect that the goods and other articles therein specified were purchased and received by him or under his direction; or that the indebtedness was incurred under his direction; that the goods were purchased at a fair cash market price and that neither he, nor any person in his behalf, had any pecuniary or other interest in the articles purchased or in the indebtedness incurred; that he received no pecuniary or other benefit therefrom, nor any promises thereof; that the articles contained in such bill were received by him, and that they conformed in all respects to the goods ordered by him or under his direction, both in quality and quantity. The state comptroller, the president of the state board of charities, and the fiscal supervisor of state charities shall from time to time classify into grades the officers and employees of the various charitable and reformatory institutions required by law to report to the fiscal supervisor, and in the month of September of each year recommend to the governor such changes in the salaries or wages of such officers and employees for the ensuing fiscal year as may seem proper, but such changes shall not be made unless the governor shall approve the same in writing. Differences in the expense of living and rates of wages in the localities in which such institutions are situate may be considered. The comptroller shall have the power of audit subject to such classification. (*Amended by L. 1914, ch. 215, and L. 1916, ch. 118, § 3, in effect Apr. 3, 1916.*)

§ 20. **Annual inventory and report of institutions.**—Every state charitable institution, state hospital, reformatory, house of refuge and industrial school shall file with the comptroller annually, on or before July twentieth, a certified inventory of all articles of maintenance on hand at the close of the preceding fiscal year, stating the kind and amount of each article. Every state charitable institution, state hospital, reformatory, house of refuge, state agricultural experiment station, and the health officer

of the port of New York during the continuance of such office, required by law to report annually to the legislature, shall state an inventory of each article of property, stating its kind and amount, except supplies for maintenance, belonging to the state and in their possession on July first of each year. (*Amended by L. 1916, ch. 118, § 4, in effect Apr. 3, 1916.*)

§ 36. Specific appropriation not to be used for other purposes; items for certain purposes required to be specific.—Money appropriated for a specific purpose shall not be used for any other purpose; and the comptroller shall not draw a warrant for the payment of any sum appropriated, unless it clearly appears from the detailed statement presented to him by the person demanding the same as required by this chapter, that the purposes for which such money is demanded are those for which it was appropriated. The comptroller shall not audit any claim for salary, labor or wages, unless an appropriation applicable thereto has been already made specifying the amount thereof appropriated for such purpose.

The comptroller shall not audit any claim or account or draw a warrant for the payment of moneys for the purchase of an automobile adapted and intended primarily for the carrying of passengers, or the rent thereof, for such purpose, for a period longer than ten days, unless moneys are specifically appropriated therefor; and an appropriation for expenses for any officer, board or commission or for any department under the state government, or in connection with the prosecution of any object or purpose, which does not in express terms include the purchase of such an automobile or automobiles shall not be held to authorize the comptroller to audit any such claim or account or draw a warrant for the payment thereof. (*Amended by L. 1915, ch. 669, and L. 1916, ch. 392, in effect May 2, 1916.*)

§ 37. Payments to state treasurer.—After this section as amended takes effect every state officer, employee, board, department or commission receiving money for or on behalf of the state from fees, penalties, costs, fines, sales of property or otherwise, shall on the fifth day of each month pay to the state treasurer all such money received during the preceding month and on the same day file a detailed, verified statement of such receipts with the comptroller, who shall keep an account thereof in his office. This section shall not apply to the manufacturing fund of the state prisons known as the capital fund, nor to the receipts of the manufacturing departments of the state hospitals for the insane, nor to the convict deposit and miscellaneous earning fund of the state prisons, nor to the working capital fund of the state commission for the blind. This section, as amended, shall be deemed to supersede any other provision of this chapter or of any other general or special law inconsistent therewith. (*Amended by L. 1910, ch. 440, L. 1912, ch. 162, L. 1915, ch. 216, and L. 1916, ch. 223, in effect Apr. 17, 1916.*)

Since the amendment of 1915 funds derived from the sale of military and naval property, fines and penalties, unexpended balances to the credit of disbanded or-

L. 1916, ch. 176.

Retained percentages; withdrawal.

§§ 43a, 51.

ganizations, and accrued interest on the military fund, should be deposited in the state treasury, notwithstanding the fact that sections 16, 142, 225 and 226 of the Military Law contemplate other disposition. Atty. Genl. Opin., 6 State Dep. Rep. 473 (1916).

Expenditure of fees by health officer of port of New York.—The health officer of the port of New York may, with the approval of the Governor in the case of an emergency, expend such portion of the fees collected by him as are necessary, notwithstanding the provision of this section that he turn over such fees on the 5th day of each month. Atty. Genl. Opin., 5 State Dep. Rep. 545 (1915).

Section 10 of L. 1913, chap. 415, is inconsistent with the provisions of this section of the Finance Law, as amended by L. 1915, chap. 216, and the State Commission for the Blind is required by said section as amended, to pay moneys received from the sale of its products into the State Treasury. Atty. Genl. Opin., 5 State Dep. Rep. 543 (1915).

§ 43-a. Retained percentages may be withdrawn. A clause may be inserted in any contract hereafter made or awarded by the state, or by any public department or official thereof, provided that the contractor may, from time to time, withdraw the whole or any portion of the amount retained from payments to the contractor pursuant to the terms of the contract, upon depositing with the state comptroller securities of a market value equal to the amount so withdrawn, said securities to be of a character in which the savings banks of the state of New York are authorized by law to invest moneys. The said clause may further provide that the state comptroller shall, from time to time, collect all interest or income on the securities so deposited, and shall pay the same, when and as collected, to the contractor who deposited the securities. The said clause may further provide that if the deposit be in the form of coupon bonds, the coupons as they respectively become due shall be delivered to the contractor. The said clause may further provide that the contractor shall not be entitled to interest or coupons or income on any of the deposited securities, the proceeds of which shall be used or applied by the state, or by any public department or official thereof, pursuant to the terms of the contract. (*Added by L. 1916, ch. 176, in effect April 10, 1916.*)

§ 51. Workmen's compensation insurance on public works.—Each contract to which the state, any public department or official thereof, or a commission appointed pursuant to law is a party and which is of such a character that the employees engaged thereon are required to be insured by the provisions of chapter forty-one of the laws of nineteen hundred and fourteen, known as the workmen's compensation law, and acts amendatory thereto, shall contain a stipulation that the same shall be void and of no effect unless the person or corporation making or performing the same shall secure compensation for the benefit of, and keep insured during the life of said contract, such employees, in compliance with the provisions of said law. (*Added by L. 1916, ch. 478, in effect May 9, 1916.*)

STATE LAW.

(L. 1909, ch. 59.)

ARTICLE VIII.

(Former article 8 repealed and new article added by L. 1916, ch. 373, in effect May 1, 1916. This entire article, as so added, was declared unconstitutional by the Court of Appeals in *Matter of Dowling*, N. Y. Law Journal, Aug. 1, 1916.)

SENATE DISTRICTS AND APPORTIONMENT OF THE MEMBERS OF ASSEMBLY OF THE STATE.

Section 120. Senate districts.

121. Apportionment of members of assembly.

122. Assembly districts.

§ 120. **Senate districts.**—The senate districts of this state from and after the time this section takes effect, shall consist as follows:

First. The first senate district shall consist of the counties of Suffolk and Nassau.

Second. The second senate district shall consist of that part of the county of Queens, within and bounded by a line, beginning at Strong Causeway on Flushing creek and running thence along Flushing creek to the junction of Iron Mill road, thence along Iron Mill road to Lawrence street, to Bradford avenue, to Maine street, to Lincoln street, to Union avenue, to Whitestone avenue, to Bayside avenue, to Little Bayside road (described on map as Saxe street, Poppenhausen avenue), to Bell avenue, thence northerly along Bell avenue about three hundred feet (or as shown on map to Mulford avenue), thence easterly to the waters of Little Neck bay, thence through the waters of Little Neck bay to the boundary line of Queens and Nassau counties, thence along said boundary line to the Atlantic ocean, thence easterly through the waters of the Atlantic ocean to the boundary line of Kings and Queens counties, thence northerly along said boundary line to Woodbine street, to Woodward avenue, to Palmetto street, to Grandview avenue, to Linden street, to Forest avenue, to Magnolia street, (or Gates avenue), to Fresh Pond road, to Woodbine avenue, (or Hughes avenue), to Long Island railroad, to Trotting Course lane, (or Woodhaven avenue), to White Pot road, (or Yellowstone avenue), to Astoria road, (or Yellowstone avenue), to North Hempstead plank road, (or Yellowstone avenue), to Lawn avenue, thence along Lawn avenue, to the stream connecting Lawn avenue and Flushing creek, thence along said stream to Flushing creek, thence along Flushing creek to Strong Causeway, the place of beginning.

Third. The third senate district shall consist of that part of the county of Queens within and bounded by a line, beginning at Strong Causeway on Flushing creek and running thence along Flushing creek to the junction of Iron Mill road, thence along Iron Mill road to Lawrence street, to Bradford avenue, to Maine street, to Lincoln street, to Union avenue, to

Whitestone avenue, to Bayside avenue, to Little Bayside road, (described on map as Saxe street, Poppenhausen avenue), to Bell avenue, thence northerly along Bell avenue about three hundred feet, (or as shown on map to Mulford avenue), thence easterly to the waters of Little Neck bay, thence through the waters of Little Neck bay, Long Island sound, East river and Newtown creek to the boundary line of Kings and Queens counties, thence along said boundary line to Woodbine street, to Woodward avenue, to Palmetto street, to Grandview avenue, to Linden street, to Forest avenue, to Magnolia street, (or Gates avenue), to Fresh Pond road, to Woodbine avenue, (or Hughes avenue), to Long Island railroad, to Trotting Course lane, (or Woodhaven avenue), to White Pot road, (or Yellowstone avenue), to Astoria road, (or Yellowstone avenue), to North Hempstead plank road, (or Yellowstone avenue), to Lawn avenue, thence along Lawn avenue to the stream connecting Lawn avenue and Flushing creek, thence along said stream to Flushing creek, thence along Flushing creek to Strong Causeway, the place of beginning. The references to map and streets contained in this description are taken from Williams map of Borough of Queens. Copyright nineteen hundred and twelve, by Williams Map and Guide Company, New York.

Fourth. The fourth senate district shall consist of that part of the county of Kings within and bounded by a line, beginning at the junction of Bushwick creek and East river and running thence through the waters of East river to the junction of Newtown creek, thence through the waters of Newtown creek, to the boundary line of Kings and Queens counties, thence along said boundary line to Bleeker street, to Knickerbocker avenue, to Greene avenue, to Hamburg avenue, to Stockholm street, to Bushwick avenue, to Kosciusko street, to Broadway, to Varet street, to Manhattan avenue, to Ten Eyck street, to Lorimer street, to Frost street, to Union avenue, to North Twelfth street, to Berry street, to North Thirteenth street, to Bushwick creek and thence through the waters of Bushwick creek to the place of beginning.

Fifth. The fifth senate district shall consist of that part of the county of Kings within and bounded by a line, beginning at the intersection of the boundary line of Kings and Queens counties and Bleeker street and running thence along Bleeker street to Knickerbocker avenue, to Greene avenue, to Hamburg avenue, to Stockholm street, to Bushwick avenue, to Kosciusko street, to Broadway, to Jamaica avenue, to Sheffield avenue, to Fulton street, to Pennsylvania avenue, to Belmont avenue, to Christopher avenue, to Blake avenue, to Sackman street, to Livonia avenue, to Powell street, to New Lots avenue, to Junius street, to Fresh creek, to the waters of Jamaica bay, thence through the waters of Jamaica bay to the boundary line of Kings and Queens counties and thence along said boundary line to the place of beginning.

Sixth. The sixth senate district shall consist of that part of the county of Kings within and bounded by a line, beginning at the junction of

Sixty-second street and the waters of New York bay and running thence southerly through the waters of New York bay, the Narrows, Gravesend bay, thence easterly through the waters of the Atlantic ocean and Jamaica bay, south of Barren island to the boundary line of Kings and Queens counties, thence along said boundary line to a point opposite the easterly end of Duck Point marsh, thence northerly to Fresh creek, thence through the waters of Fresh creek to the junction of Junius street, thence along Junius street to New Lots avenue, to Powell street, to Livonia avenue, to Sackman street, to Blake avenue, to Christopher avenue, to Belmont avenue, to Rockaway avenue, to Sutter avenue, to Saratoga avenue, to Pitkin avenue, to Eastern parkway, to Buffalo avenue, to Carroll street, to Utica avenue, to Church avenue, to East Forty-ninth street, to Snyder avenue, to Schenectady avenue, to Avenue J, to East Thirty-fourth street, to Flatbush avenue, to Avenue I, to East Seventeenth street, to Foster avenue, to East Fourth street, to Elmwood avenue, to East Third street, to Foster avenue, to Gravesend avenue, to Lawrence avenue, to Forty-seventh street, to Fifteenth avenue, to Forty-third street, to Seventh avenue, to Forty-fourth street, to Sixth avenue, to Sixty-first street, to Fifth avenue, to Sixty-second street, to Fourth avenue, to Sixty-first street, to Third avenue, to Sixty-second street, and thence along Sixty-second street to the place of beginning.

Seventh. The seventh senate district shall consist of that part of the county of Kings within and bounded by a line, beginning at the junction of Sixty-second street and the waters of New York bay and running thence along Sixty-second street to Third avenue, to Sixty-first street, to Fourth avenue, to Sixty-second street, to Fifth avenue, to Sixty-first street, to Sixth avenue, to Forty-fourth street, to Seventh avenue, to Forty-third street, to Thirteenth avenue, to Fortieth street, to Twelfth avenue, to Thirty-ninth street, to Fort Hamilton avenue, (or parkway), to Gravesend avenue, to Terrace place, to Eleventh avenue, to Prospect avenue, to Fourth avenue, to Carroll street, to Fifth avenue, to Berkeley place, to Sixth avenue, to Lincoln place, to Fifth avenue, to Saint Mark's place, to Fourth avenue, to Bergen street, to Court street, to Amity street, to Clinton street, to Baltic street, to Hicks street, to Warren street, to Columbia street, to Congress street, to the waters of Buttermilk channel and East river, and thence southerly through the waters of East river, Buttermilk channel, Gowanus bay and New York bay to the place of beginning.

Eighth. The eighth senate district shall consist of that part of the county of Kings within and bounded by a line, beginning at the junction of Buttermilk channel, East river and Congress street, and running thence along Congress street, to Columbia street, to Warren street, to Hicks street, to Baltic street, to Clinton street, to Amity street, to Court street, to Bergen street, to Bond street, to Dean street, to Nevins street, to Pacific street, to Bond street, to Fulton street, to Gold street, to Willoughby street, to Raymond street, to Lafayette street, to Navy street, to DeKalb avenue,

to Washington park, to Myrtle avenue, to Spencer street, to Flushing avenue, to Bedford avenue, to Wallabout street, to Middleton street, to Marcy avenue, to Lorimer street, to Harrison avenue, to Middleton street, to Broadway, to Wallabout street, to Throop avenue, to Gerry street, to Varet street, to Manhattan avenue, to Ten Eyck street, to Lorimer street, to Frost street, to Union avenue, to North Twelfth street, to Berry street, to North Thirteenth street, to Bushwick creek, and thence through the waters of Bushwick creek, East river and Buttermilk channel to the place of beginning.

Ninth. The ninth senate district shall consist of that part of the county of Kings within and bounded by a line, beginning at the intersection of Myrtle avenue and Spencer street and running thence along Spencer street to DeKalb avenue, to Bedford avenue, to Dean street, to Nostrand avenue, to Montgomery street, to Franklin avenue, to Malbone street, to Washington avenue, to Lefferts avenue, to Flatbush avenue, to Ocean avenue, to Parkside avenue, to Parade place, to Caton avenue, to Coney Island avenue, to Beverly road, to East Eighth street, to Avenue C, (or Avenue C West), to Ocean parkway, to Cortelyou road, to West street, to Forty-third street, to Sixteenth avenue, to Forty-second street, to Fifteenth avenue, to Forty-third street, to Thirteenth avenue, to Fortieth street, to Twelfth avenue, to Thirty-ninth street, to Fort Hamilton avenue (or parkway), to Gravesend avenue, to Terrace place, to Eleventh avenue, to Prospect avenue, to Fourth avenue, to Carroll street, to Fifth avenue, to Berkeley place, to Sixth avenue, to Lincoln place, to Fifth avenue, to Saint Mark's place, to Fourth avenue, to Bergen street, to Bond street, to Dean street, to Nevins street, to Pacific street, to Bond street, to Fulton street, to Gold street, to Willoughby street, to Raymond street, to Lafayette street, to Navy street, to DeKalb avenue, to Washington park, to Myrtle avenue, and thence along Myrtle avenue to the place of beginning.

Tenth. The tenth senate district shall consist of that part of the county of Kings within and bounded by a line, beginning at the intersection of Myrtle avenue and Spencer street and running thence along Spencer street, to Flushing avenue, to Bedford avenue, to Wallabout street, to Middleton street, to Marcy avenue, to Lorimer street, to Harrison avenue, to Middleton street, to Broadway, to Wallabout street, to Throop avenue, to Gerry street, to Broadway, to Jamaica avenue, to Sheffield avenue, to Fulton street, to Pennsylvania avenue, to Belmont avenue, to Rockaway avenue, to Sutter avenue, to Saratoga avenue, to Pitkin avenue, to Eastern parkway, to Saratoga avenue, to Saint Mark's avenue, to Hopkinson avenue, to Bergen Street, to Saratoga avenue, to Atlantic avenue, to Rochester avenue, to Fulton street, to Patchen avenue, to Sumpter street, to Fulton street, to Tompkins avenue, to McDonough street, to Lewis avenue, to Lafayette avenue, to Bedford avenue, to DeKalb avenue, to Spencer street, and thence along Spencer street to the place of beginning.

Eleventh. The eleventh senate district shall consist of that part of the

county of Kings within and bounded by a line, beginning at the intersection of Lafayette avenue and Bedford avenue, and running thence along Lafayette avenue to Lewis avenue, to McDonough street, to Tompkins avenue, to Fulton street, to Sumpter street, to Patchen avenue, to Fulton street, to Rochester avenue, to Atlantic avenue, to Saratoga avenue, to Bergen street, to Hopkinson avenue, to Saint Mark's avenue, to Saratoga avenue, to Eastern parkway, to Buffalo avenue, to Carroll street, to Utica avenue, to Church avenue, to East Forty-ninth street, to Snyder avenue, to Schenectady avenue, to Avenue J, to East Thirty-fourth street, to Flatbush avenue, to Avenue I, to East Seventeenth street, to Foster avenue, to East Fourth street, to Elmwood avenue, to East Third street, to Foster avenue, to Gravesend avenue, to Lawrence avenue, to Forty-seventh street, to Fifteenth avenue, to Forty-second street, to Sixteenth avenue, to Forty-third street, to West street, to Cortelyou road, to Ocean parkway, to Avenue C, (or Avenue C West), to East Eighth street, to Beverly road, to Coney Island avenue, to Caton avenue, to Parade place, to Parkside avenue, to Ocean avenue, to Flatbush avenue, to Lefferts avenue, to Washington avenue, to Malbone street, to Franklin avenue, to Montgomery street, to Nostrand avenue, to Dean street, to Bedford avenue, to Lafayette avenue, and thence along Lafayette avenue to place of beginning.

Twelfth. The twelfth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the East River and East Tenth street, and running thence, along East Tenth street to Avenue D, to East Eleventh street, to Avenue C, to East Twelfth street, to First avenue, to East Thirteenth street, to Second avenue, to East Fourteenth street, to Fourth avenue, to Astor place, to Lafayette street, to Great Jones street, to East Third street, to Second avenue, to Chrystie street, to Stanton street, to Forsythe street, to Broome street, to Chrystie street, to Canal street, to East Broadway, to Clinton street, to Grand street, to Gouverneur street, to Madison street, to Jackson street, to the East river, thence through the waters of the East river to the place of beginning.

Thirteenth. The thirteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of West Nineteenth street and the Hudson river and running thence, along West Nineteenth street to Eighth avenue, to Greenwich avenue, to West Twelfth street, to Eighth avenue, to Bleeker street, to Christopher street, to West Fourth street, to West Washington place, to Sixth avenue, to West Third street, to Great Jones street, to East Third street, to Second avenue, to Chrystie street, to Stanton street, to Forsythe street, to Broome street, to Chrystie street, to Canal street, to East Broadway, to Clinton street, to Grand street, to Gouverneur street, to Madison street, to Jackson street, to the East river, thence through the waters of the East and Hudson rivers to the place of beginning, and including Governor's, Ellis, Bedloe's and Oyster islands.

Fourteenth. The fourteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the East river and East Seventy-third street, and running thence, along East Seventy-third street to First avenue, to East Seventy-fourth street, to Second avenue, to East Seventy-third street, to Third avenue, to East Fifty-sixth street, to Lexington avenue, to East Twenty-third street, to Third avenue, to East Eighteenth street, to Irving place, to East Fourteenth street, to Second avenue, to East Thirteenth street, to First avenue, to East Twelfth street, to Avenue C, to East Eleventh street, to Avenue D, to East Tenth street, to the East river, thence through the waters of the East river to the place of beginning and including Blackwell's island.

Fifteenth. The fifteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of West Nineteenth street and the Hudson river and running thence along West Nineteenth street to Eighth avenue, to Greenwich avenue, to West Thirteenth street, to Seventh avenue, to West Thirty-eighth street, to Eighth avenue, to Central Park West, to West Seventieth street, to Columbus avenue, to West Sixty-fourth street, to Amsterdam avenue, to West Seventieth street, to West End avenue, to West Seventy-first street, to the Hudson river, thence through the waters of the Hudson river to the place of beginning.

Sixteenth. The sixteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the Harlem river and East One Hundred and Sixth street, and running thence along East One Hundred and Sixth street to Third avenue, to East One Hundred and Tenth street, to Fifth avenue, to East One Hundred and Second street, to Park avenue, to East Ninety-seventh street, to Lexington avenue, to East Seventy-fourth street, to Third avenue, to East Seventy-third street, to Second avenue, to East Seventy-fourth street, to First avenue, to East Seventy-third street, to the East river, thence through the waters of the East and Harlem rivers to the place of beginning.

Seventeenth. The seventeenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of West Ninety-first street, and the Hudson river and running thence, along West Ninety-first street, to Broadway, to West Ninety-eighth street, to Central park west, to West Ninety-seventh street, through Transverse road across Central park at Ninety-seventh street to Fifth avenue, to East One Hundred and Second street, to Park avenue, to East Ninety-seventh street, to Lexington avenue, to East Seventy-fourth street, to Third avenue, to East Fifty-sixth street, to Lexington avenue, to East Twenty-third street, to Third avenue, to East Eighteenth street, to Irving place, to East Fourteenth street, to Fourth avenue, to Astor place, to Lafayette street, to Great Jones street, to West Third street, to Sixth avenue, to West Washington place, to West Fourth street, to Christopher street, to

Bleecker street, to Eighth avenue, to West Twelfth street, to Greenwich avenue, to West Thirteenth street, to Seventh avenue, to West Thirty-eighth street, to Eighth avenue, to Central park west, to West Seventieth street, to Columbus avenue, to West Sixty-fourth street, to Amsterdam avenue, to West Seventieth street, to West End avenue, to West Seventy-first street, to the Hudson river, thence through the waters of the Hudson river to the place of beginning.

Eighteenth. The eighteenth senate district shall consist of that part of the county of New York within and bounded by a line beginning at the Harlem river and the Speedway, at a point opposite One Hundred and Sixty-fifth street, and running thence through the waters of the Harlem river to East One Hundred and Sixth street, thence along East One Hundred and Sixth street to Third avenue, to East One Hundred and Tenth street, to West One Hundred and Tenth street, to Lenox avenue, to West One Hundred and Eleventh street, to Fifth avenue, to East One Hundred and Twenty-fifth street, to Madison avenue, to East One Hundred and Twenty-seventh street, to Fifth avenue, to West One Hundred and Thirty-fifth street, to Lenox avenue, to West One Hundred and Thirty-sixth street, to Seventh avenue, to West One Hundred and Forty-first street, to Edgecomb avenue, to Bradhurst avenue, to West One Hundred and Fifty-fifth street to the Speedway, thence along the Speedway to the place of beginning, including Ward's and Randall's islands.

Nineteenth. The nineteenth senate district shall consist of that part of the county of New York within and bounded by a line beginning at the junction of West One Hundred and Tenth street and the Hudson river, and running thence along West One Hundred and Tenth street (or Cathedral parkway), to Broadway, to West One Hundred and Thirteenth street, to Manhattan avenue, to Saint Nicholas avenue, to West One Hundred and Forty-first street, to Seventh avenue, to West One Hundred and Thirty-sixth street, to Lenox avenue, to West One Hundred and Thirty-fifth street, to Fifth avenue, to East One Hundred and Twenty-seventh street, to Madison avenue, to East One Hundred and Twenty-fifth street, to Fifth avenue, to West One Hundred and Eleventh street, to Lenox avenue, to West One Hundred and Tenth street, to Fifth avenue, to East Ninety-seventh street, through Transverse road across Central Park at Ninety-seventh street to Central park west, to West Ninety-eighth street, to Broadway, to West Ninety-first street, to the Hudson river, thence through the waters of the Hudson river to the place of beginning.

Twentieth. The twentieth senate district shall consist of that part of the county of New York within and bounded by a line beginning at the junction of the Hudson river and Spuyten Duyvil creek, and running thence along Spuyten Duyvil creek, and the northerly end of Manhattan island to the Harlem river, thence along the Harlem river to the Speedway at a point opposite West One Hundred and Sixty-fifth street, thence along the Speedway to West One Hundred and Fifty-fifth street, to Bradhurst

avenue, to Edgecomb avenue, to West One Hundred and Forty-first street, to Saint Nicholas avenue, to Manhattan avenue, to West One Hundred and Thirteenth street, to Broadway, to West One Hundred and Tenth street (or Cathedral parkway), to the Hudson river, thence through the waters of the Hudson river to the place of beginning.

Twenty-first. The twenty-first senate district shall consist of that part of the county of Bronx within and bounded by a line, beginning at the junction of Saint Ann's avenue and the Bronx kills and running thence along Saint Ann's avenue, to East One Hundred and Fifty-sixth street, to Eagle avenue, to East One Hundred and Sixty-first street to Third avenue, to Franklin avenue, to East One Hundred and Sixty-eighth street, to Fulton avenue, to East One Hundred and Seventy-fifth street, to Anthony avenue, to East One Hundred and Seventy-sixth street, to Clay avenue, to East One Hundred and Seventy-fifth street, to Monroe avenue, to East One Hundred and Seventy-seventh street, to West One Hundred and Seventy-seventh street, to West Tremont avenue, to West One Hundred and Seventy-seventh street, to the Harlem river, thence southerly, through the waters of the Harlem river and the Bronx Kills to the place of beginning.

Twenty-second. The twenty-second senate district shall consist of that part of the county of Bronx within and bounded by a line, beginning at the junction of Saint Ann's avenue, and the Bronx kills and running thence along Saint Ann's avenue to East One Hundred and Fifty-sixth street, to Eagle avenue, to East One Hundred and Sixty-first street, to Third avenue, to Franklin avenue, to East One Hundred and Sixty-eighth street, to Fulton avenue, to East One Hundred and Seventy-fifth street, to Arthur avenue, to Crotona Park North, to Prospect avenue, to East One Hundred and Seventy-fifth street, to Southern boulevard, to East One Hundred and Seventy-third street, to Vyse avenue, to East One Hundred and Seventy-second street, to the Bronx river, thence southerly and westerly through the waters of the Bronx and East rivers (south of Riker's island) and the Bronx kills to the place of beginning.

Twenty-third. The twenty-third senate district shall consist of that part of the county of Bronx within and bounded by a line, beginning at the junction of the Harlem river and West One Hundred and Seventy-seventh street, and running thence along West One Hundred and Seventy-seventh street, to West Tremont avenue, to West One Hundred and Seventy-seventh street, to East One Hundred and Seventy-seventh street, to Monroe avenue, to East One Hundred and Seventy-fifth street, to Clay avenue, to East One Hundred and Seventy-sixth street, to Anthony avenue, to East One Hundred and Seventy-fifth street, to Arthur avenue, to Crotona Park North, to Prospect avenue, to East One Hundred and Seventy-fifth street, to Southern Boulevard, to East One Hundred and Seventy-third street, to Vyse avenue, to East One Hundred and Seventy-second street, to the Bronx river, thence southerly and easterly through the waters of the Bronx and East rivers to Long Island sound, thence northerly through the waters

of Long Island sound, along the boundary line of Bronx county, to the boundary line of Bronx and Westchester counties, thence westerly along said boundary line to the Hudson river, thence southerly through the waters of the Hudson and Harlem rivers, along the boundary line of Bronx county, to the place of beginning.

Twenty-fourth. The twenty-fourth senate district shall consist of the counties of Richmond and Rockland.

Twenty-fifth. The twenty-fifth senate district shall consist of that part of the county of Westchester comprising the towns of Bedford, Eastchester, Harrison, Lewisboro, Mamaroneck, New Castle, North Castle, North Salem, Pelham, Poundridge, Rye, Scarsdale, Somers, and Yorktown together with the cities of Mount Vernon, New Rochelle, White Plains, and that part of the city of Yonkers within and bounded by a line beginning at the intersection of Sherwood avenue and the westerly boundary line of the city of Mount Vernon and running thence, along Sherwood avenue to the Bronx River road, to Yonkers avenue, to Vernon place, to Leonard place, to Richfield place, to Yonkers avenue, to Kimball avenue, to the northern boundary line of the city of New York, thence easterly along said boundary line, to the easterly boundary line of the city of Yonkers, thence northerly along said boundary line to the place of beginning.

Twenty-sixth. The twenty-sixth senate district shall consist of that part of the county of Westchester comprising the towns of Greenburgh, Mount Pleasant, Ossining and Cortland, together with all the remainder of the city of Yonkers not hereinbefore described, as a part of the twenty-fifth senate district.

Twenty-seventh. The twenty-seventh senate district shall consist of the counties of Sullivan and Orange.

Twenty-eighth. The twenty-eighth senate district shall consist of the counties of Putnam, Dutchess and Columbia.

Twenty-ninth. The twenty-ninth senate district shall consist of the counties of Ulster, Greene and Delaware.

Thirtieth. The thirtieth senate district shall consist of the county of Albany.

Thirty-first. The thirty-first senate district shall consist of the county of Rensselaer.

Thirty-second. The thirty-second senate district shall consist of the counties of Saratoga and Schenectady.

Thirty-third. The thirty-third senate district shall consist of the counties of Clinton, Essex, Warren and Washington.

Thirty-fourth. The thirty-fourth senate district shall consist of the counties of Saint Lawrence and Franklin.

Thirty-fifth. The thirty-fifth senate district shall consist of the counties of Lewis, Herkimer, Hamilton and Fulton.

Thirty-sixth. The thirty-sixth senate district shall consist of the county of Oneida.

Thirty-seventh. The thirty-seventh senate district shall consist of the counties of Jefferson and Oswego.

Thirty-eighth. The thirty-eighth senate district shall consist of the county of Onondaga.

Thirty-ninth. The thirty-ninth senate district shall consist of the counties of Otsego, Madison, Montgomery and Schoharie.

Fortieth. The fortieth senate district shall consist of the counties of Cortland, Broome and Chenango.

Forty-first. The forty-first senate district shall consist of the counties of Schuyler, Tompkins, Chemung and Tioga.

Forty-second. The forty-second senate district shall consist of the counties of Cayuga, Seneca and Wayne.

Forty-third. The forty-third senate district shall consist of the counties of Ontario, Yates and Steuben.

Forty-fourth. The forty-fourth senate district shall consist of the counties of Genesee, Wyoming, Allegany and Livingston.

Forty-fifth. The forty-fifth senate district shall consist of that part of the county of Monroe comprising the towns of Brighton, Henrietta, Irondequoit, Menden, Penfield, Perinton, Pittsford, Rush and Webster; together with the fourth, sixth, seventh, eighth, twelfth, the second, third and fourth election districts of the thirteenth, the sixteenth, seventeenth, eighteenth, twenty-first and twenty-second wards of the city of Rochester, as at present constituted.

Forty-sixth. The forty-sixth senate district shall consist of that part of the county of Monroe comprising the towns of Chili, Clarkson, Gates, Greece, Hamlin, Ogden, Parma, Riga, Sweden and Wheatland; together with the first, second, third, fifth, ninth, tenth, eleventh, the first election district of the thirteenth, the fourteenth, fifteenth, nineteenth, twentieth and twenty-third wards of the city of Rochester as at present constituted.

Forty-seventh. The forty-seventh senate district shall consist of the counties of Orleans and Niagara.

Forty-eighth. The forty-eighth senate district shall consist of that part of the county of Erie within and bounded by a line, beginning at the intersection of the northerly boundary line of the city of Buffalo and Delaware avenue, and running thence, in said city of Buffalo, along Delaware avenue to Scajaquada creek, thence through the waters of Scajaquada creek to Main street, thence along Main street, to Riley street, to Michigan street, to Northampton street, to Jefferson street, to Best street, to Herman street, to Genesee street, to Sherman street, to Broadway, to Madison street, to William street, to Union street, to East Eagle street, to Main street, to the Buffalo river, thence through the waters of the Buffalo river to Lake Erie, thence through the waters of Lake Erie and the Niagara river, along the International boundary line, to the northerly boundary line of the city of Buffalo, thence along said boundary line of the city of Buffalo to the place of beginning.

Forty-ninth. The forty-ninth senate district shall consist of that part of the county of Erie within and bounded by a line, beginning at the intersection of the eastern boundary line of the city of Buffalo and East Delavan avenue and running thence, in said city of Buffalo, along East Delavan avenue, to Northumberland avenue, to East Ferry street, to Montana avenue, to Genesee street, to New York Central Belt Line, to Walden avenue, to Herman street, to Genesee street, to Sherman street, to Broadway, to Madison street, to Williams street, to Union street, to East Eagle street, to Main street, to the Buffalo river, thence through the waters of the Buffalo river to Lake Erie, thence southerly through the waters of Lake Erie to the southerly boundary line of the city of Buffalo, thence along the southerly and easterly boundary line of said city of Buffalo to the place of beginning.

Fiftieth. The fiftieth senate district shall consist of that part of the county of Erie comprising the towns of Alden, Amherst, Aurora, Boston, Brant, Cheektowaga, Clarence, Colden, Collins, Concord, East Hamburg, Eden, Elma, Evans, Grand Island, Hamburg, Holland, Lancaster, Marilla, Newstead, North Collins, Sardinia, Tonawanda, Wales and West Seneca and the cities of Tonawanda and Lackawanna; together with that part of the city of Buffalo within and bounded by a line, beginning at the intersection of the northerly boundary line of the city of Buffalo and Delaware avenue and running thence, in said city of Buffalo, along Delaware avenue to Scajaquada creek, thence through the waters of Scajaquada creek to Main street, thence along Main street to Riley street, to Michigan avenue, to Northampton street, to Jefferson street, to Best street, to Waldon avenue, to the New York Central Belt Line, to Genesee street, to Montana avenue, to East Ferry street, to Northumberland avenue, to East Delavan avenue, to the easterly boundary line of the city of Buffalo, thence along the easterly and northerly boundary line of the city of Buffalo, to the place of beginning.

Fifty-first. The fifty-first senate district shall consist of the counties of Chautauqua and Cattaraugus. (*Added by L. 1916, ch. 373, in effect May 1, 1916.*)

§ 121. Apportionment of members of assembly.—The number of members of assembly of this state hereafter to be chosen in the several counties thereof shall be as follows:

- In the county of Albany, three.
- In the county of Allegany, one.
- In the county of Bronx, eight.
- In the county of Broome, two.
- In the county of Cattaraugus, one.
- In the county of Cayuga, one.
- In the county of Chautauqua, two.
- In the county of Chemung, one.

In the county of Chenango, one.
In the county of Clinton, one.
In the county of Columbia, one.
In the county of Cortland, one.
In the county of Delaware, one.
In the county of Dutchess, two.
In the county of Erie, eight.
In the county of Essex, one.
In the county of Franklin, one.
In the county of Fulton-Hamilton, one.
In the county of Genesee, one.
In the county of Greene, one.
In the county of Herkimer, one.
In the county of Jefferson, one.
In the county of Kings, twenty-three.
In the county of Lewis, one.
In the county of Livingston, one.
In the county of Madison, one.
In the county of Monroe, five.
In the county of Montgomery, one.
In the county of Nassau, two.
In the county of New York, twenty-three.
In the county of Niagara, two.
In the county of Oneida, three.
In the county of Onondaga, three.
In the county of Ontario, one.
In the county of Orange, two.
In the county of Orleans, one.
In the county of Oswego, one.
In the county of Otsego, one.
In the county of Putnam, one.
In the county of Queens, six.
In the county of Rensselaer, two.
In the county of Richmond, two.
In the county of Rockland, one.
In the county of Saint Lawrence, two.
In the county of Saratoga, one.
In the county of Schenectady, two.
In the county of Schoharie, one.
In the county of Schuyler, one.
In the county of Seneca, one.
In the county of Steuben, two.
In the county of Suffolk, two.
In the county of Sullivan, one.
In the county of Tioga, one.

§ 122.	Assembly districts.	L. 1916, ch. 373.
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In the county of Tompkins, one.
 In the county of Ulster, one.
 In the county of Warren, one.
 In the county of Washington, one.
 In the county of Wayne, one.
 In the county of Westchester, five.
 In the county of Wyoming, one.
 In the county of Yates, one. (*Added by L. 1916, ch. 373, in effect May 1, 1916.*)

§ 122. **Assembly districts.**—The supervisors of each of the aforesaid counties, which are by the provisions of this article entitled to more than one member of assembly shall meet on the twenty-third day of May, nineteen hundred and sixteen, at the place where their last meetings were held; they shall organize by appointing one of their number as chairman, and another as secretary, and shall proceed to divide their respective counties into so many assembly districts as they are entitled respectively to members of assembly under this article; and shall thereupon make their certificates respectively, containing a description of each assembly district, specifying the number of each district and the population thereof according to the last state enumeration. In any city comprising one or more counties in which there is no board of supervisors, the members of the board of aldermen of said city shall constitute the board for the division of the counties in such city into assembly districts, and they shall meet at the same time and in the same manner organize, make such divisions in said counties and certificates, as boards of supervisors in other counties are required to do. The said certificate shall be signed by a majority of such supervisors respectively, except in cities in which there is no board of supervisors and in such cities by a majority of the aldermen of said cities, and they shall cause duplicate certificates to be filed in the office of the secretary of state and the office of the clerk of their respective counties. (*Added by L. 1916, ch. 373, in effect May 1, 1916.*)

STATE PARKS.

See Parks.

STATUTES.

L. 1916, ch. 378.—An act to repeal chapter six hundred and seventy-three of the laws of nineteen hundred and thirteen, entitled "An act authorizing the preparation of an index of the session laws and statutes of the state of New York," making an appropriation for the expenses of the commissioner appointed to prepare such index, directing the chairman of the judiciary committees of the two houses of the legislature to examine the work and report thereon to the next legislature, and making an appropriation for the expenses of such examination and report. (*In effect May 1, 1916.*)

§ 1. Chapter six hundred and seventy-three of the laws of nineteen hundred and thirteen, entitled "An act authorizing the preparation of an index of the session laws and statutes of the state of New York," is hereby repealed and the term of office of the commissioner appointed thereunder shall expire on the first day of May, nineteen hundred and sixteen. Such commissioner shall thereupon, upon request, turn over to the legislative bill drafting commission all the books, records, furniture and other property of the state in his possession or under his control as such commissioner, which commission shall be the custodian thereof.

§ 2. The sum of five thousand dollars (\$5,000), or so much thereof as may be necessary, is hereby appropriated for the payment and compensation of the expenses to May first, nineteen hundred and sixteen, of the commissioner appointed pursuant to chapter six hundred and seventy-three of the laws of nineteen hundred and thirteen, payable in the manner provided by such act.

§ 3. The chairman of the judiciary committee of the senate and the chairman of the judiciary committee of the assembly shall examine the plan or system under which the work of preparing an index of the session laws and statutes has heretofore been conducted, the practicability of continuing the work in accordance with such plan or system, or in accordance with a plan or system to be recommended by them, estimate the probable time in which such work may be completed and the total cost thereof, and shall report their conclusions to the legislature of nineteen hundred and seventeen, with such recommendations as they may deem advisable. The chairmen of such committees may employ and fix the compensation of such persons as may be needed to assist them in making such examination and report.

§ 4. The sum of five thousand dollars (\$5,000), or so much thereof as may be necessary, is hereby appropriated for the expenses of the chairmen of such committees, payable upon their certificate.

STENOGRAPHERS.

In eighth district; Judiciary L., § 161. In ninth district; Judiciary L., id. For appellate term, second district; Judiciary L., § 104-a.

STOCK CORPORATION LAW.

(L. 1909, ch. 61.)

§ 6. Power to borrow money and mortgage property.

This section is for the protection and benefit of creditors as well as stockholders, and the remedy thereunder may be invoked by a trustee in bankruptcy. In re Progressive Wall Paper Corp. (1916), 230 Fed. 171.

The requirement of the consent of stockholders is not for the benefit or protection of the stockholders alone, but also for the corporation itself and its creditors. In re Progressive Wall Paper Corp. (1916), 230 Fed. 171.

§ 9. Reorganization upon sale of corporate property.

Liability on contractual obligations of predecessor.—The provision that upon reorganization of a corporation, upon the sale of the corporate property and franchises to a successor corporation, "such corporation shall be vested with and be entitled to exercise and enjoy all the rights, privileges and franchises which at the time of such sale belonged to or were vested in the corporation last owning the property sold, or its receiver, and shall be subject to all the provisions, duties and liabilities imposed by law on that corporation," relates only to obligations imposed by law and is not broad enough to impose upon a corporation contractual obligations of its predecessor which it never assumed. *Seventy-Eighth Street and Broadway Co. v. Pursell Mfg. Co.* (1915), 92 Misc. 178, 155 N. Y. Supp. 259.

§ 28. Liability of directors for making unauthorized dividends.

Survival of action for illegal declaration of dividends.—Action to recover damages for the alleged illegal declaration of dividends by a foreign corporation survives the death of the defendant. *German-American Coffee Co. v. Johnston* (1915), 168 App. Div. 31, 153 N. Y. Supp. 866.

Withdrawal of capital, see *Baldwin v. Bay Realty Co.* (1915), 169 App. Div. 941, 942, 153 N. Y. Supp. 886.

Distribution of stock acquired from profits arising from sale of land by corporation.—See *People ex rel. Queens County Water Co. v. Travis* (1916), 171 App. Div. 521, 157 N. Y. Supp. 943.

§ 32. **Books to be kept.**—Every stock corporation shall keep at its office correct books of account of all its business and transactions, and a book to be known as the stock book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. The stock book of every such corporation shall be open daily, during at least three business hours, for inspection by any judgment creditor of the corporation; or by any person who shall have been stockholder of record in such corporation for at least six months immediately preceding his demand; or by any person holding stock of such corporation to an amount equal to five per centum of all its outstanding shares; or by any person thereunto in writing authorized by the holders of stock of such corporation to an amount equal to five per centum of all of its outstanding shares. Persons so entitled to inspect stock books may

make extracts therefrom. No transfer of stock shall be valid as against the corporation, its stockholders and creditors for any purpose except to render the transferee liable for the debts of the corporation to the extent provided for in this chapter, until it shall have been entered in such book as required by this section, by an entry showing from and to whom transferred. The stock book of every such corporation and the books of account of every bank shall be presumptive evidence of the facts therein so stated in favor of the plaintiff, in any action or proceeding against such corporation or any of its officers, directors or stockholders. Every corporation that shall neglect or refuse to keep or cause to be kept such books, or to keep any book open for inspection as herein required, shall forfeit to the people the sum of fifty dollars for every day it shall so neglect or refuse. If any officer or agent of any such corporation shall wilfully neglect or refuse to make any proper entry in such book or books, or shall neglect or refuse to exhibit the same, or to allow them to be inspected and extracts taken therefrom as provided in this section, the corporation and such officer or agent shall each forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all damages resulting to him therefrom. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of stockholders of such corporation or of any other corporation, or has aided or abetted any person in procuring any stock list for any such purpose. Nothing herein impairs the power of the courts to compel by mandamus or judgment the production for examination by any stockholder of the stock books of a corporation. (*Amended by L. 1916, ch. 127, in effect Apr. 3, 1916.*)

§ 33. **Stock books of foreign corporations.**—Every foreign stock corporation having an office for the transaction of business in this state, except moneyed and railroad corporations, shall keep therein a book to be known as a stock book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. Such stock book shall be open daily, during business hours, for inspection by any judgment creditor of such corporation; by any officer of this state authorized by law to investigate the affairs of any such corporation; by any person who shall have been stockholder of record in such corporation for at least six months immediately preceding his demand; by any person holding stock of such corporation to an amount equal to five per centum of all of its outstanding shares; or by any person thereunto in writing authorized by the holders of stock of such corporation to an amount equal to five per centum of all of its outstanding shares. Persons so entitled to inspect stock books may make extracts therefrom. If any such foreign stock corporation has in this state a transfer agent,

whether such agent shall be a corporation or a natural person, such stock book may be deposited in the office of such agent and shall be open to inspection at all times during the usual hours of transacting business, to any stockholder, judgment creditor or officer of the state authorized by law to investigate the affairs of such corporation. For any refusal to allow such book to be inspected, such corporation and the officer or agent so refusing shall each forfeit the sum of fifty dollars to be recovered by the person to whom such refusal was made. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of stockholders of such corporation or of any other corporation or has aided or abetted any person in procuring any stock list for any such purpose. Nothing herein impairs the power of the courts to compel by mandamus or judgment the production for examination by any stockholder of the stock books of a corporation. (*Amended by L. 1916, ch. 127, in effect Apr. 3, 1916.*)

When keeping of stock-book for inspection by stockholders excused; stock book taken from corporation under subpoena *duces tecum*, see *Otto v. Franklin's, Inc.* (1915), 90 Misc. 311, 153 N. Y. Supp. 107.

§ 53. Subscription to stock.

Failure to pay ten per cent in cash.—A contract of subscription to corporate stock made subsequently to incorporation is invalid for failure to comply with the provision that every subscriber whose subscription is payable in money shall pay to the directors ten per cent of the amount of his subscription in cash. A subscription which is invalid for failure to pay in cash ten per cent of the amount of the subscription cannot be validated by assignment where the assignee was not a party to the subscription contract and it did not contain any provision which expressly or by implication conferred any right upon the assignee. A provision of the subscription agreement to the effect that it might be pledged did not obligate a subscriber to pay to the pledgee thereof anything which he was not obligated to pay to the corporation with which only he contracted. *Harriman National Bank v. Palmer* (1916), 93 Misc. 431, 158 N. Y. Supp. 111.

§ 55. Consideration for issue of stock and bonds.

Money, labor or property.—Mortgage bonds issued by a corporation and pledged as collateral security for its note *held* to have been issued for "property" within the meaning of this section. In re *Progressive Wall Paper Corp.* (1915), 224 Fed. 143.

Bonds cannot be pledged to secure payment of a pre-existing debt, and an extension of the time for payment of a debt does not satisfy the requirement of the statute. The surrender of an old note and the substitution therefor of a new note in its place, either with the same or with different indorsers cannot justify the issuance of bonds, because the corporation does not receive in return money, labor or property within the meaning of the statute. In re *Progressive Wall Paper Corp.* (1916), 229 Fed. 489.

The payment by a bank to a corporation of money which the corporation immediately pays back to the bank to extinguish an old indebtedness, so that a new indebtedness may be created for which bonds may be pledged under the law, is not an issuance of bonds "for money paid" within the meaning of the statute. In re *Progressive Wall Paper Corp.* (1916), 229 Fed. 489.

An old debt and extension of time for the payment thereof is value within the meaning of the law. In re Progressive Wall Paper Corp. (1915), 224 Fed. 143.

Bonds pledged as security for a pre-existing debt, must be deemed to have been "issued" within the meaning of this section. In re Progressive Wall Paper Corp. (1916), 229 Fed. 489.

Full paid stock may be issued for property as well as for cash, and in the absence of fraud in the transaction, the judgment of the directors as to the value of the property purchased, is made conclusive by the statute. Alpha-Portland Cement Co. v. Schratwaiser (1915), 221 Fed. 258.

Stock issued for patents is valid, although the directors had no personal knowledge of the value of patents, where they had before them the opinions of others and exercised their judgment honestly and fairly. Alpha-Portland Cement Co. v. Schratwaiser (1915), 221 Fed. 258.

Valuation of property transferred to corporation in consideration for subscription of stock; duty to account for salary received without rendering services therefor.—A widow who had inherited from her husband a business which had been successful for over fifty years, yielding from \$25,000 to \$50,000 a year in actual profits, together with her three sons formed a corporation capitalized at \$150,000, to which she transferred all of the business and subscribed for 1,497 shares of the stock, some of which she subsequently assigned to her sons. She drew a salary as vice-president, although she performed no duties, and the sons also drew salaries. After a few years the company was duly adjudicated a bankrupt. In an action by the trustees in bankruptcy against the officers and directors of the corporation to compel them to account, it was *held*, that the widow, acting as vice-president, should not be required to account on her subscription, as there was no fraud in the valuation of the property transferred to the corporation, but she should be required to account for the salary received by her during the period when the corporation was running at a loss, for which she rendered no services. Williams v. McClave (1915), 168 App. Div. 192, 154 N. Y. Supp. 38.

§ 56. Liability of stockholders.

Upon the filing of a certificate of incorporation the liability of the subscribers becomes fixed without the formal issuance of stock to them. Irish Paper Corporation v. White (1915), 91 Misc. 261, 154 N. Y. Supp. 778.

Enforcement of liability for unpaid subscription; defenses.—In an action to enforce the individual liability of a stockholder for unpaid stock, it is no defense that defendant subscribed for sixty-three shares as shown by his certificate on the understanding that all but five of them were to be transferred to other parties later. After a business corporation has incurred an honest debt, a subscriber to the certificate of incorporation, duly filed, cannot, in an action to enforce the individual liability of a stockholder, be permitted to say that he should not be held liable because (1) he did not pay ten per cent down on all shares of stock issued to him; (2) he was under no obligation to pay until all the capital stock had been subscribed, or (3) the debts covered by the complaint were not valid debts of the corporation and not enforceable because the whole capital had not been paid in before said debts were incurred. Irish Paper Corporation v. White (1915), 91 Misc. 261, 154 N. Y. Supp. 778.

§ 57. Liability of stockholders to laborers, servants or employees.

Bookkeeper within protection of statute.—The word "employee" as used in this section includes a bookkeeper employed at a weekly salary who, in addition to the usual duties of such position, attended to the banking business of the corporation and answered inquiries in the absence of officers. *It seems*, that such employee is

§§ 64, 66.

Prohibited transfers.

within the terms of the statute although he should receive an annual salary. *Farnum v. Harrison* (1915), 167 App. Div. 704, 152 N. Y. Supp. 835.

§ 64. Conduct of such meeting; certificate of increase or reduction.

A certificate of a proceeding presented for filing, should state the amount of the capital stock theretofore authorized, the proportion thereof actually issued, and in case of a reduction, the whole amount of ascertained debts and liabilities. *Atty. Genl. Opin.*, 5 State Dep. Rep. 464 (1915).

The purpose of requiring the "amount of the ascertained debts and liabilities" to be stated, where the capital is sought to be reduced, is to show that the reduction does not violate the limitation of section 62, that the amount of the debts and liabilities shall not exceed the amount of the reduced capital. *Atty. Genl. Opin.*, 5 State Dep. Rep. 464 (1915).

A statement that the whole amount of the ascertained debts and liabilities is less than the amount to which the capital stock is sought to be reduced, is a sufficient compliance with the statute. *Atty. Genl. Opin.*, 5 State Dep. Rep. 464 (1915).

§ 66. Prohibited transfers to officers or stockholders.

Duties and liabilities of officers and directors.—The officers and directors of an insolvent corporation are not at liberty, without liability to the creditors, to take its assets and convert them to their own use in payment of the debts of the corporation to themselves and a few of the creditors, and especially on debts of the corporation, where they personally are endorsers. *Pennsylvania R. R. Co. v. Pedrick* (1915), 222 Fed. 75.

There is an implied contract on the part of the directors and officers of a corporation to at least use reasonable care and diligence to see to it that the assets of the corporation are not dissipated or wasted or misapplied or applied to payment of their own individual claims against the corporation when it is insolvent, or its insolvency is imminent, and this fact is known to them, in preference to the satisfaction of the claims and demands of other creditors of the corporation. *Pennsylvania R. R. Co. v. Pedrick* (1915), 222 Fed. 75.

Officers who aid and abet an illegal and prohibited use of the assets of the corporation are equally liable with those who procure a part or the whole of the assets as a preferential payment. *Pennsylvania R. R. Co. v. Pedrick* (1915), 222 Fed. 75.

At common law, and except as forbidden by statute, an insolvent debtor had the right to prefer one creditor over others. *Grandison v. Robertson* (1915), 220 Fed. 985.

Elements of preference.—In order to constitute a preference under this section, it must appear (1) that at the time of the payment the corporation was insolvent, or that its insolvency was imminent; (2) that the payment was made (not received) with the intent of giving a preference to a particular creditor over other creditors of the corporation. *Grandison v. Robertson* (1915), 220 Fed. 985, S. C. 231 Fed. 785, 790.

Intent to create preference.—The mere fact that a corporation is shown to be unable to pay all its debts, does not necessarily render a payment or transfer by it in the usual course of business ineffectual. In order to constitute a preference under this section, the corporation or its officers making payment must have known or expected that it would have that effect. Where a corporation transfers all its live assets and discontinues its business, an intent to give a preference may be inferred. *Cardozo v. Brooklyn Trust Co.*, 228 Fed. 333.

The intent to give a preference which invalidates a payment under this section

must be determined as of the time the transaction occurred, without regard to later events. *Howland v. Metropolitan Bank* (1915), 228 Fed. 542.

Intent to prefer must be proved by direct evidence, or inferred as the necessary consequence of other acts clearly proved. *Wills v. Venus Silk Glove Manufacturing Co.* (1915), 170 App. Div. 352, 156 N. Y. Supp. 115.

A payment is void under this section if made with an intent to give a preference without reference to the state of mind of the party who receives the payment. *Grandison v. National Bank of Rochester* (1915), 220 Fed. 981.

A company adopted a resolution to assign to its president as collateral security for the endorsement of a note accounts receivable, and thereafter the president endorsed the note and subsequently the accounts were assigned to him and the proceeds deposited in a bank to his credit in a collateral account, and thereafter were applied by him on the note due to the bank. Suit by the trustee in bankruptcy of the company to recover such payments. Evidence examined and *held*, that the payments were made with an intent to create a preference within the meaning of this section, and that they may be recovered. *Grandison v. Robertson* (1915), 220 Fed. 985.

A chattel mortgage authorized by a corporation in financial difficulty prior to but actually executed after the receipt of a loan of money by an officer and director, which was actually delivered to the corporation, is not a preference under this section. *Matter of Metropolitan Dairy Co.* (1915), 224 Fed. 444.

Purchaser for valuable consideration.—Where a corporation took up a note before maturity and paid part of the same and gave a new note for the balance, with the same individual indorsers, it was *held* that the holder of the new note gave a valuable consideration for the part payment. *Howland v. Metropolitan Bank* (1915), 228 Fed. 542.

A trustee in bankruptcy may recover a preferential transfer made in violation of this section. *Grandison v. National Bank of Rochester* (1916), 220 Fed. 981; *Grandison v. Robertson* (1915), 220 Fed. 985; *Cardogo v. Brooklyn Trust Co.* (1915), 228 Fed. 333.

Remedy of injured creditor; action at law.—An injured creditor is not bound to seek or enforce his remedy through the medium of a creditor's or stockholder's or trustee's suit in equity for an accounting, but may bring an independent action to recover the damages which he has sustained. A suit for an accounting would seem to be one to reach the specific property or its proceeds, while the other is a direct action to recover judgment for the damages sustained by reason of the wrongful acts of the directors or officers. *Pennsylvania R. R. Co. v. Pedrick* (1915), 222 Fed. 75.

§ 70. Liability of officers, directors and stockholders of foreign corporation.

Unauthorized dividends.—The legislature has the power not only to make the wrongful act of directors of a foreign corporation in declaring a dividend except from the surplus or the net profits from its business an offence against our laws, but to give the right of action therefor to the corporation itself. The legislature meant by this section to extend to foreign corporations transacting business in this state the prohibitions in respect to dividends that earlier sections of the same statute had already laid on domestic corporations and to establish an offence against our laws, not merely to declare that there should be a remedy here for an offence against the home laws. When a foreign corporation comes into this state and transacts its business here, it must yield obedience to our laws, and violation of a condition may be made to impose a liability on the directors who violate it. Hence, directors of a foreign corporation, transacting business in this state and subjecting itself to the conditions established by our laws, may be charged with

Code Civ. Pro. § 443.

Service of summons.

L. 1916, ch. 439.

liability if they declare dividends from capital. *German-American Coffee Co. v. Diehl* (1915), 216 N. Y. 57, revg. 167 App. Div. 928.

Survival of action for illegal declaration of dividends.—An action to recover damages for the alleged illegal declaration of dividends by a foreign corporation survives the death of the defendant. *German-American Coffee Co. v. Johnston* (1915), 168 App. Div. 31, 153 N. Y. Supp. 866.

SUFFOLK COUNTY.

Employment of clerks by assessors; *Town L.*, § 125.

SUMMONS.

Code of Civil Procedure.

§ 443. **Service without state.**—*Subd. 5, amended by L. 1916, ch. 439, in effect Sept. 1, 1916, as follows:*

5. When the summons is served personally without the state the affidavit of service must show that the person making it is a resident or citizen of the state of New York, or a sheriff, or under sheriff, deputy sheriff, constable of the county or other political subdivision in which the service is made, or an officer authorized by the laws of this state to take acknowledgments of deeds to be recorded in this state, an attorney and counsellor at law duly qualified to practice in the state where such service is made or by a United States marshal.

When such affidavit is made by a resident or citizen of the state of New York, his place of residence, and street number, if any, shall be stated therein. The affidavit of service made without the state shall contain the official designation of the person making it and shall have annexed thereto a certificate of the proper official showing that the person before whom the affidavit was sworn to was, at the time of administering the oath, qualified to act.

SUPERVISORS.

Compensation; *County L.*, § 23.

Accounts; *Town L.*, § 98.

SUPREME COURT.

L. 1916, ch. 591.—An act to increase the number of justices of the supreme court in the third judicial district, and to provide for an additional justice therein. (*In effect May 18, 1916.*)

§ 1. From and after the first day of January, nineteen hundred and seventeen, there shall be an additional justice of the supreme court in the third judicial district of the state of New York, and the number of justices now existing for such district is hereby increased accordingly.

§ 2. The additional justice herein provided for shall first be elected at the general election held in the month of November, nineteen hundred and

L. 1916, ch. 165.

Number of justices; special terms.

§§ 1-3.

sixteen, and shall take office on the first day of January, nineteen hundred and seventeen.

§ 3. All vacancies in such office whether by death, resignation or expiration of term shall be filled in the same manner and at the same time as in the case of any justice of the supreme court.

L. 1916, ch. 165.—An act to increase the number of the justices of the supreme court in the eighth judicial district of the state and to provide for additional justices therein. (*In effect Apr. 7, 1916.*)

§ 1. There shall be two additional justices of the supreme court in the eighth judicial district of the state so that the whole number of justices in such district shall be fourteen and the number of justices now existing therein is hereby increased accordingly.

§ 2. There shall be elected in the eighth judicial district at the general election to be held in the month of November, nineteen hundred and sixteen, two additional justices of the supreme court, each of whom shall take office on the first day of January, nineteen hundred and seventeen.

§ 3. Any vacancy in the office of justice of the supreme court, hereby created, shall be filled in the same manner and at the same time as in the case of vacancy in the office of any justice of the supreme court.

L. 1916, ch. 75.—An act to amend chapter two hundred and seventy-four of the laws of nineteen hundred and two, entitled "An act to authorize the holding of special terms of the supreme court in the cities of Jamestown and Olean," in relation to abolishing the holding of trial terms in the city of Olean. (*In effect Mch. 24, 1916.*)

§ 1. Section one of chapter two hundred and seventy-four of the laws of nineteen hundred and two, entitled "An act to authorize the holding of special terms of the supreme court in the cities of Jamestown and Olean," as amended by chapter thirty-seven of the laws of nineteen hundred and eight and chapter four hundred and forty-nine of the laws of nineteen hundred and thirteen, is hereby amended to read as follows:

§ 1. The justices of the appellate division of the supreme court in the fourth judicial department may, in their discretion, in addition to the terms of the supreme court appointed by them to be held at the court houses in the counties of Chautauqua and Cattaraugus, appoint special terms of the supreme court, to be held as follows: At a designated place in the city of Jamestown and in the village of Fredonia, both in the county of Chautauqua; and in the city of Olean in the county of Cattaraugus, and assign justices to hold the same. At such special terms all business may be transacted and cases tried and heard which do not require the attendance of a jury.

L. 1911, ch. 855 (B., C. & G.'s Consol. Laws, Vol. 8, p. 2707, Vol. 9, p. 788).

§ 1. The appellate division of the supreme court in the first department is hereby authorized in its discretion to retire any clerk, assistant clerk,

clerk to a justice, stenographer, typewriter, interpreter, librarian, assistant librarian, crier, assistant crier, telephone operator or attendant who shall have served as such in the said appellate division or in the supreme court in and for the first judicial district or in any court which has been consolidated with the said supreme court or as an appointee of a justice of said court or courts, or who has had charge of the records of any such court in the office of the clerks of the counties of New York and Bronx, and who shall have become physically or mentally incapacitated for the further performance of the duties of his position, provided however that such person shall have been employed prior to such retirement for at least twenty years in the aggregate in one or more of such positions heretofore mentioned or provided that such person immediately prior to such retirement shall have been employed continuously for at least ten years in one or more of such positions and in addition thereto shall have also served or been employed at any time prior thereto in one or more places or positions in any court, department or office of the state or of the county or city of New York, or as an appointee of a justice of said court or courts provided however that such combined employment shall aggregate at least twenty years. Any person or persons retired from service pursuant to this section shall be paid out of the funds apportioned to the supreme court of the first department an annual sum for annuity to be determined by said appellate division but not exceeding one-half of the average amount of his annual salary or compensation for a period of two years preceding the time of such retirement. Such annuity shall be paid in equal monthly installments during the lifetime of the person or persons so retired. (*Amended by L. 1912, ch. 486, L. 1913, ch. 138, L. 1914, ch. 497, and L. 1916, ch. 480, in effect May 9, 1916.*)

§ 2. Any clerk, assistant clerk, clerk to a justice, stenographer, typewriter, interpreter, librarian, assistant librarian, crier, assistant crier, telephone operator or attendant who shall have served as such in the said appellate division or in the supreme court in and for the first judicial district or in any court which has been consolidated with the said supreme court in and for the first judicial district, or as an appointee of a justice of said court or courts, or who has had charge of the records of any such court in the office of the clerks of the counties of New York and Bronx who shall have been employed for at least twenty-five years in the aggregate in one or more of such positions or who shall have immediately prior to retirement been employed continuously for at least twelve and one-half years in one or more of such positions and in addition thereto shall have also served or been employed at any time prior thereto in one or more places or positions in any court, department or office of the state or of the county or city of New York, or as an appointee of a justice of such court or courts, provided however that such combined employment shall aggregate at least twenty-five years, shall upon his own application in writing

L. 1916, ch. 480.

First department; retirement of officers.

§ 2.

to the appellate division of the supreme court in the first department be retired by the said appellate division and shall be awarded, granted and paid an annual sum for annuity equal to one-half of the average amount of his annual salary or compensation for a period of two years preceding the time of such retirement. Any employee heretofore mentioned in this act who after twenty years' service in the manner heretofore prescribed in section one of this act loses his said position or employment without any fault or misconduct on his part, shall be retired by said appellate division as of the date of the loss of his position or employment, provided, however, the said employee so losing his position or employment shall have within one full calendar month after the loss of such position or employment, made, or had application made on his behalf in writing to the said appellate division for such retirement, and shall be awarded, granted and paid an annual sum for annuity equal to as many twenty-fifths of one-half of the average amount of his annual salary or compensation for a period of two years preceding the date of the loss of his position or employment as he has served aggregate years. Such annuity shall be paid in equal monthly installments during the lifetime of the person or persons so retired. Any person or persons retired from service pursuant to this section of this act shall be paid out of the funds apportioned to the supreme court of the first department, and from the contributions to the retirement fund in such manner as the said appellate division shall provide by order upon such retirement. No employee in service at the time this act takes effect shall be retired pursuant to this section unless within one full calendar month after this act takes effect he shall have signified his intention in writing to the said appellate division that he desires to take advantage of this act. The said appellate division shall forthwith upon receipt of such notice or notices forward to the comptroller of the city of New York the names of all persons who have signified their intention to take advantage of this section pursuant to the provisions thereof. The comptroller of the city of New York shall at the end of the second full calendar month after this act takes effect and at the end of each full calendar month thereafter deduct and retain monthly from the salary or compensation of each employee entitled to take advantage of this section who has signified in the manner aforesaid his intention to take advantage thereof, and of each employee entitled to take advantage of this section who may hereafter be employed or appointed, one per centum of his monthly salary. Such moneys so deducted or retained as aforesaid shall by the said comptroller be paid into what shall be known as the retirement fund, which fund and all moneys which shall form a part thereof as hereinafter provided, or thereafter accrue to it, shall be held by said comptroller for the purposes of this section with his usual powers of disposition and investment, subject, however, to the direction, control and approval of the said appellate division. All moneys paid to the appellate division prior to the passage of this act pursuant to section two of chapter

one hundred and thirty-eight of the laws of nineteen hundred and thirteen shall be paid or caused to be paid by the said appellate division to the said comptroller of the city of New York within three months after this act takes effect and upon receipt thereof by said comptroller he shall pay all such moneys into the said retirement fund, and upon said payment such moneys shall be deemed a part of such fund for the purpose of this act. Every person to whom this section applies who shall have signified his intention to take advantage thereof, who shall continue in his employment after this act takes effect, as well as every person to whom this section applies, who may hereafter be employed or appointed to a position or place, shall be deemed to consent and agree to the deduction made and provided for herein and shall receipt in full for his salary or compensation and such payment shall be a full and complete discharge and acquittance of all claims or demands whatsoever for the services rendered by such person during the period covered by such payment. (*Added by L. 1913, ch. 138, and amended by L. 1914, ch. 497, and L. 1916, ch. 480, in effect May 9, 1916.*)

SURROGATES' COURTS.

Code of Civil Procedure.

§ 2531. **Proof of service of a subpoena, citation or other process.**—Proof of service of a subpoena, citation or other process issued from a surrogate's court, must be made by the certificate of the sheriff, when served by him, and in any other case by the affidavit of the person so serving it; or, where the person served is of full age and not incompetent, by a written admission signed by him, accompanied with proof, by acknowledgment, affidavit or otherwise, of the genuineness of his signature. Proof of publication and deposit in a post-office may be made as prescribed in section four hundred and forty-four of this act. (*Amended by L. 1916, ch. 445, in effect May 9, 1916.*)

§ 2544. **Id.; by the surrogate of another county.**—Where the surrogate has good reason to believe that a subscribing or a material witness who is in another county of the state cannot conveniently attend before him, and no issue is pending therein, he may make an order, directing that the witness be examined before the surrogate of the county in which he is; specifying by an order the nature and manner of the examination. A copy of the order must be transmitted by him to the surrogate designated in the order, together with the original will, where the testimony relates to the execution of a written will. The examination may be taken by one of the clerks described in section 2502 of this chapter. The examination, after it is reduced to writing and subscribed by the witness or otherwise duly authenticated, together with a statement of the proceedings upon the execution of the order, must be certified by the surrogate or clerk taking the examination, attested by the seal of his court, and returned without

L. 1916, ch. 624.

Appraisers; inventory. Code Civ. Pro. §§ 2574, 2664a, 2665.

delay, with the original will, if any, to the surrogate who directed the examination, who must file the same in his office. A surrogate may appoint a referee to take the testimony, who shall report the same to the surrogate who makes the appointment. An examination so taken has the same effect as if it was taken by commission. (*Amended by L. 1916, ch. 446, in effect May 9, 1916.*)

§ 2574. Revocation of letters or removal of trustee without citation.—*Subd. 7, amended by L. 1916, ch. 588, in effect Sept. 1, 1916, as follows:*

7. Where such executor, administrator, guardian or trustee mingles the funds of such estate with his own or deposits the same with any person, association or corporation authorized to do business under the banking law, in an account other than as such executor, administrator, guardian or trustee.

§ 2664-a. Funds of estates to be kept separate.—Every executor, administrator, guarddian or testamentary trustee shall keep the funds and property received from the estate of any deceased persons separate and distinct from his own personal fund and property. He shall not invest the same or deposit the same with any person, association or corporation doing business under the banking law or other person or institution, in his own name, but all transactions had and done by him shall be in his name as such executor, administrator, guardian or testamentary trustee.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor. (*Title, article and section added by L. 1916, ch. 588, in effect Sept. 1, 1916.*)

§ 2665. Appointment of appraisers and making inventory.—On the application of an executor or administrator, an order must be entered in the surrogate's court appointing two disinterested appraisers, as often as may be necessary, to appraise the personal property of a deceased person. The executor or administrator, within three months after qualifying and after giving at least five days' notice personally or by mail to the legatees or next of kin, residing in the county of the decedent, and posting a notice in three public places of the town, or city where he resided, specifying the time and place at which the appraisement will be made, must make a true and perfect inventory of all the personal property of the decedent. Before making the appraisement, the appraisers must take and subscribe an oath, to be inserted in the inventory, that they will truly, honestly and impartially appraise the personal property exhibited to them, according to the best of their knowledge and ability. They must in the presence of such of the parties interested as attend, estimate and appraise the property exhibited to them, and set down each article separately with the value thereof in dollars and cents, distinctly, in figures opposite to the articles respectively. (*Amended by L. 1916, ch. 624, in effect May 20, 1916.*)

§ 2753. Commissions of executor, administrator, guardian or testamentary trustee.

On the settlement of the account of any executor, administrator, guardian or testamentary trustee, the surrogate must allow to him his just, reasonable and necessary expenses actually paid by him, and if he be an attorney and counselor-at-law of this state, and shall have rendered legal services in connection with his official duties, such compensation for such legal services as shall appear to the surrogate to be just and reasonable; and in addition thereto the surrogate must allow to such executor, administrator, guardian or testamentary trustee for his services in such official capacity, and if there be more than one, apportion among them according to the services rendered by them respectively:

For receiving and paying out all sums of money not exceeding one thousand dollars, at the rate of five per centum.

For receiving and paying out any additional sums not amounting to more than ten thousand dollars, at the rate of two and one-half per centum.

For all sums above eleven thousand dollars, at the rate of one per centum.

The value of any real or personal property, and the increment thereof, received, distributed or delivered, shall be considered as money in making computation of commissions. But this shall not apply in case of a specific legacy or devise.

If an executor acting as trustee, or if a trustee or guardian, is required to receive income and pay over the same, and such executor, trustee or guardian pays over said income and renders an annual account to the beneficiary of all his receipts and disbursements on account thereof, he shall be allowed, and may retain, the same commission on the amount so accounted for as he would be allowed upon principal on a judicial settlement; if he does not render such annual account, he shall be allowed, upon his judicial settlement, his commissions upon the total income from any money or property then payable to such beneficiary.

If the gross value of the principal of the estate or fund accounted for amounts to one hundred thousand dollars or more, each executor, administrator, guardian or testamentary trustee is entitled to the full compensation on principal and income allowed herein to a sole executor, administrator, guardian or testamentary trustee, unless there are more than three, in which case the compensation to which three would be entitled must be apportioned among them according to the services rendered by them, respectively. Where the will provides a specific compensation to an executor, administrator, testamentary guardian or trustee, he is not entitled to any allowance for his services, unless by a written instrument filed with the surrogate, within four months from the date of his letters, or in the case of a testamentary trustee or guardian, from the date of his filing his oath, he renounces the specific compensation. Where successive or different letters are issued to the same person on the estate of the same dece-

dent, including a case where letters testamentary or letters of general administration, are issued to a person who has been previously appointed a temporary administrator, he is entitled to compensation in one capacity only, at his election, except that where he has received compensation in one capacity he is entitled to the excess, if any, of the compensation allowed by law, above the sum which he has already received in the other capacity. (*Amended by L. 1916, ch. 596, in effect May 19, 1916.*)

§ 2768. **Definition of expressions used in this chapter.**—In construing the provisions of this chapter, the following rules must be observed, except where a contrary intent is expressly declared in the provision to be construed, or plainly apparent from the context thereof:

1. The word "intestate," signifies a person who died without leaving a valid will; but where it is used with respect to particular property it signifies a person who died without effectually disposing of that property by will whether he left a will or not.

2. The word "assets," signifies personal property applicable to the payment of the debts of a decedent.

3. The word "debts" includes every claim and demand, upon which a judgment for a sum of money, or directing the payment of money, could be recovered in an action; and the word "creditor" includes every person having such a claim or demand, any person having a claim for expense of administration, or any person having a claim for funeral expenses.

4. The word, "will," signifies a last will and testament, and includes all the codicils to a will.

5. The expression, "letters of administration," includes letters of temporary administration.

6. The expression, "testamentary trustee," includes every person, except an executor, an administrator with the will annexed, or a guardian, who is designated by a will, or by any competent authority, to execute a trust created by a will; and it includes such an executor or administrator, where he is acting in the execution of a trust created by the will, which is separable from his functions as executor or administrator.

7. The word, "surrogate," where it is used in the text, or in a bond or undertaking, given pursuant to any provision of this chapter, includes every officer or court vested by law with the functions of surrogate.

8. The expression, "judicial settlement," where it is applied to an account, signifies a decree of a surrogate's court, whereby the account is made conclusive upon the parties to the special proceeding, either for all purposes, or for certain purposes specified in the statute; and an account thus made conclusive is said to be "judicially settled."

9. The expression, "intermediate account," denotes an account filed in the surrogate's office, for the purpose of disclosing the acts of the person accounting, and the condition of the estate or fund in his hands, and not made the subject of a judicial settlement.

10. The expression, "upon the return of a citation," where it is used in a provision requiring an act to be done in the surrogate's court, relates to the time and place at which the citation is returnable, or to which the hearing is adjourned; includes a supplemental citation, issued to bring in a party who ought to be but has not been cited; and implies that before doing the act specified, due proof must be made, that all persons required to be cited have been duly cited.

11. The expression, "persons interested," where it is used in connection with an estate or fund, includes every person entitled, either absolutely or contingently, to share in the estate or the proceeds thereof, or in the fund, as husband, wife, legatee, next of kin, heir, devisee, assignee, grantee or otherwise except as a creditor. Where a provision of this chapter prescribes that a person interested may object to an appointment or may apply for an inventory, an account, or increased security, an allegation of his interest, duly verified, suffices, although his interest is disputed; unless he has been excluded by a judgment, decree, or other final determination, and no appeal therefrom is pending.

12. The term, "next of kin," includes all those entitled, under the provisions of law relating to the distribution of personal property, to share in the unbequeathed residue of the assets of a decedent after payment of debts and expenses, other than a surviving husband or wife.

13. The expression, "real property," includes every estate, interest, and right, legal or equitable, in lands, tenements, or hereditaments, except those which are determined or extinguished by the death of a person seized or possessed thereof, or in any manner entitled thereto, and except those which are declared by law to be assets. The word, "inheritance," signifies real property as defined in this subdivision, descended as prescribed by law. The expression, "personal property," signifies every kind of property which survives a decedent, other than real property as defined in this subdivision, and includes a right of action conferred by special statutory provision upon an executor or administrator.

14. The word "guardian" refers to a guardian of an infant's person or property, or both, appointed by the surrogate's court or the supreme court, and includes a guardian appointed by will or deed.

15. Whenever in this chapter a paper or instrument is required to be "acknowledged, or proved, and duly certified," the same shall be acknowledged or proven in the same manner as a deed is required to be acknowledged or proved and certified to be recorded in that county, except that when executed within the state of New York, no certificate of the county clerk shall be required.

16. The word "respondent" when used in this chapter signifies every party to a special proceeding, except the petitioner.

17. The words "surrogate's court" and "surrogate" where they refer to jurisdiction mean the particular court or surrogate having jurisdiction of the estate or fund.

L. 1916, ch. 400.

Final report of codification commission.

§ 1.

*§ 18. Whenever in this chapter a citation, order, notice or paper is directed to be deposited in the "post-office" or in a "specified post-office," such deposit may be made or directed to be made in any post-office, branch post-office, sub-station or letter box maintained and exclusively controlled by the United States government. (*Amended by L. 1916, ch. 447, in effect May 29, 1916.*)

L. 1916, ch. 400.—An act to extend the time for making the final report of the commissioners designated to consolidate, codify and revise the laws relating to the estates of deceased persons and the procedure and practice in surrogates' courts. (*In effect May 2, 1916.*)

§ 1. The time for making the final report to the legislature of the commissioners designated by chapter five hundred and thirty of the laws of nineteen hundred and fourteen, to consolidate, codify and revise the laws relating to the estates of deceased persons and the procedure and practice in surrogates' courts, as extended by chapter four hundred and fifty-one of the laws of nineteen hundred and fifteen, is hereby further extended until February fifteenth, nineteen hundred and seventeen.

SYPHON.

Defined; General Business L., § 360-a.

* So in original.

TAX LAW.

(L. 1909, ch. 62.)

§ 2. **Definitions.**—1. “Tax commission” as used in this chapter means the state tax commission and “tax department” means the state tax department.

2. “Comptroller” as used in this chapter means the state comptroller.

3. “Assessor” as used in this chapter shall be deemed to include any elected or appointed officer of any civil or political subdivision of the state, charged by law with the duty of assessing property for taxation for state, county or local purposes.

4. “Tax district” as used in this chapter, means unless otherwise herein provided a city or town of this state.

5. “County treasurer” includes any officer performing the duties devolving upon such office under whatever name.

6. The terms “land,” “real estate,” and “real property,” as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and underground; all surface, underground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through, any streets, highways or public places, any mains, pipes, tanks, conduits or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the state. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a “special franchise.” A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under

or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

7. The term "special franchise" shall not be deemed to include the crossing of a street, highway or public place outside the limits of a city or incorporated village where such crossing is less than two hundred and fifty feet in length, unless such crossing be the continuation of an occupancy of another street, highway or public place. This subdivision shall not apply to any elevated railroad.

8. The terms "personal estate," and "personal property," as used in this chapter, include chattels, money, things in action, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; debts and obligations for the payment of money due or owing to persons residing within this state, however secured or wherever such securities shall be held; debts due by inhabitants of this state to persons not residing within the United States for the purchase of any real estate; public stocks, stocks in moneyed corporations, and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate. (*Amended by L. 1916, ch. 323, in effect Apr. 26, 1916.*)

Telephone line is taxable real property. *New York Telephone Co. v. State* (1915), 169 App. Div. 310, 321, 154 N. Y. Supp. 1059.

A special franchise involves a grant from competent public authority, and there can be no franchise if an act is done within the boundaries of a street "by virtue of the ownership of the soil or of some interest therein." Hence, where a railroad company, after a city opens a street and builds a bridge over its tracks acquiring a mere easement for street purposes, acquires additional lands adjacent to its original right of way, and uses it for switch tracks underneath the bridge, it should not be assessed as a special franchise. So, also, additional lands acquired by a railroad company across streets laid out subsequent and adjacent to its right of way, upon which no structures have been erected, are not assessable as a special franchise. *People ex rel. N. Y. Cent. & H. R. R. R. Co. v. Woodbury* (1915), 167 App. Div. 428, 153 N. Y. Supp. 537.

Canal lands owned by the State are a public place, within the meaning of subdivision 3 of this section of the Tax Law, and hence the crossing of said lands by the tracks of a railroad company is a special franchise and taxable as such. *People ex rel. N. Y. Cent. & H. R. R. R. Co. v. Woodbury* (1915), 167 App. Div. 535, 153 N. Y. Supp. 541.

Occupancy of streets for private siding or switch track granted to an industrial company for private purposes only, is not subject to taxation as a special franchise against either the railroad or the industrial company. *Atty. Genl. Opin.* (1915), 4 State Dep. Rep. 533.

Tangible property included in a special franchise should be valued at the cost of reproduction less depreciation. *People ex rel. N. Y. Cent. & H. R. R. R. Co. v. Woodbury* (1915), 167 App. Div. 428, 153 N. Y. Supp. 537.

Railroad bridges crossing streets, highways and public places, are tangible property used in connection with a special franchise, but highway bridges cannot be so considered unless the tracks remain on the surface. Nevertheless, the amount paid by a railroad for its share of the construction of a highway bridge may be

§ 4.	Exemptions from taxation.	L. 1916, ch. 411.
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considered in estimating the intangible value. Atty. Genl. Opin., 5 State Dep. Rep. 460 (1915).

Where a structure is forced on a railroad, under section 65 of the Railroad Law, solely for street purposes, then so far as the assessment of the tangible element of a franchise is concerned, its value and even the part contributed by the railroad should not be charged against it. Atty. Genl. Opin., 5 State Dep. Rep. 460 (1915).

A lease of real property for a term of three years or more constitutes "tangible" property. Atty. Genl. Opin. (1915), 4 State Dep. Rep. 524.

Special franchise tax upon the subway and bridges as part of the tangible property of a railroad.—Where a railroad company has possessed for many years a franchise to maintain and operate its railroad through a street of a city, but for the purpose of eliminating grade crossings a subway for a street to pass under the railroad and two overhead bridges for two other streets to pass over the railroad were constructed, toward the cost of which structures the railroad company was compelled to contribute, under the provisions of the Railroad Law, such subway and overhead bridges are not the property of the railroad company, and hence are not subject to an assessment for a special franchise tax as part of the tangible property of the company. The fact that the abutments of the bridges may rest upon the right of way of the railroad company and that its tracks may rest on top of the subway does not make such structures any part of the property of the company. These structures are part of the public street and the company has no control over the same or power to change them except upon authority of the proper municipal officials. *People ex rel. N. Y., O. & W. R. Co. v. Tax Commissioners* (1915), 215 N. Y. 434, revg. 166 App. Div. 632.

Franchise to construct and maintain railroad bridges and viaducts over navigable waters.—Where a railroad company incorporated under a special statute (L. 1866, ch. 763) was authorized by such statute to construct, maintain and operate its railroad over certain navigable rivers and streams, subject to the public easement of navigation, upon condition that it should construct and maintain in a manner prescribed by the statute "substantial bridges with suitable draws, and viaducts with proper openings, over or across the same, whenever the same may be necessary," and the railroad company has erected and maintains bridges and trestles for its railroad to pass over such navigable waters, such bridges and trestles are tangible property situated above public waters, and the franchise or right of the company to cross such waters and to construct and maintain its bridges and trestles over the same is a special franchise liable to assessment and taxation. *People ex rel. Harlem River and Port Chester R. R. Co. v. State Board of Tax Commissioners* (1915), 215 N. Y. 507, affg. 165 App. Div. 609.

The words "stocks in moneyed corporations," as used in subdivision 5, include shares of stock in State and national banks. Atty. Genl. Opin., 5 State Dep. Rep. 471 (1915).

§ 4. Exemption from taxation.—*Subd. 7, amended by L. 1916, ch. 411, in effect May 3, 1916, as follows:*

7. The real property of a corporation or association organized exclusively for the moral or mental improvement of men or women, or for religious, bible, tract, charitable, benevolent, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, historical or cemetery purposes, or for the enforcement of laws relating to children or animals, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes, and the personal property of any such corporation shall be exempt from taxation. But no such cor-

poration or association shall be entitled to any such exemption if any officer, member or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes, or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purposes be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association, or for any of its members or employees, or if it be not in good faith organized or conducted exclusively for one or more of such purposes. The real property of any such corporation or association entitled to such exemption held by it exclusively for one or more of such purposes and from which no rents, profits or income are derived, shall be so exempt, though not in actual use therefor by reason of the absence of suitable buildings or improvements thereon, if the construction of such buildings or improvements is in progress, or is in good faith contemplated by such corporation or association; or if such real property is held by such corporation or association upon condition that the title thereto shall revert in case any building not intended and suitable for one or more of such purposes shall be erected upon said premises or some part thereof. The real property of any such corporation not so used exclusively for carrying out thereupon one or more of such purposes but leased or otherwise used for other purposes, shall not be exempt, but if a portion only of any lot or building of any such corporation or association is used exclusively for carrying out thereupon one or more such purposes of any such corporation or association, then such lot or building shall be so exempt only to the extent of the value of the portion so used, and the remaining or other portion, to the extent of the value of such remaining or other portion, shall be subject to taxation; provided, however, that a lot or building owned and actually used for hospital purposes, by a free public hospital, depending for maintenance and support upon voluntary charity, shall not be taxed as to a portion thereof leased or otherwise used for the purposes of income, when such income is necessary for, and is actually applied to the maintenance and support of such hospital, and further provided that the real property of any fraternal corporation, association or body created to build and maintain a building or buildings for its meeting or meetings of the general assembly of its members, or subordinate bodies of such fraternity and for the accommodation of other fraternal bodies or associations, the entire net income of which real property is exclusively applied or to be used to build, furnish and maintain an asylum or asylums, a home or homes, a school or schools, for the free education or relief of the members of such fraternity, or for the relief, support and care of worthy and indigent members of the fraternity, their wives, widows or orphans, shall be exempt from taxation, and provided also that the real estate owned by a free public library, situate outside of a city, shall not be taxed as to that portion thereof leased or otherwise used for purposes of

§§ 5, 8.	Place of taxation.	L. 1916, ch. 323.
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income, when such income is necessary for and actually applied to the maintenance and support of such library. Property held by any officer of a religious denomination shall be entitled to the same exemptions, subject to the same conditions and exceptions, as property held by a religious corporation. (*Amended by L. 1916, ch. 411, in effect May 3, 1916.*)

Subd. 11, amended by L. 1916, ch. 412, in effect May 3, 1916, as follows:

11. The real and personal property of a minister of the gospel or priest of any denomination who is engaged in the work assigned to him by the church or denomination to which he belongs, or who is disabled by impaired health from the performance of such duties, or over seventy years of age, and the property of the widow of such minister while she remains such, but the total amount of such exemption on account of both real and personal property, shall not exceed fifteen hundred dollars.

§ 5. **Taxation of lands sold or leased by the state.**—All lands which have been sold by the state, although not conveyed, shall be assessed in the same manner as if such purchaser were the actual owner. Improvements not acquired by the state but situate on land purchased by the state shall be assessed to the owner thereof. Where land is leased by the state such leasehold interest, except in cases where by the terms of the lease the state is to pay the taxes imposed upon the property leased, shall be assessed to the lessee or occupant in the tax district where the land is situated. (*Amended by L. 1916, ch. 323, § 2, in effect Apr. 26, 1916.*)

§ 8. **Place of taxation of property of residents.**—Every person shall be taxed in the tax district where he resides when the assessment for taxation is made, for all personal property owned by him, or under his control as agent, trustee, guardian, executor or administrator. Where taxable personal property is in the possession or under the control of two or more agents, trustees, guardians, executors or administrators residing in different tax districts, each shall be taxed for an equal portion of the value of such property so held by them. Rents reserved in any lease in fee or for one or more lives or for a term more than twenty-one years and chargeable upon real property within the state, shall be taxable to the person entitled to receive the same, as personal property in the tax district where such real property is situated, at a principal sum, the interest of which at the legal rate per annum shall produce a sum equal to such annual rents, and if payable in anything except money, at the value of the rents in money to be ascertained by the assessors, the value of each rent to be assessed separately, and for the purpose of the taxation thereof such person is to be deemed a resident of such tax district. When a person shall have acquired a residence in a tax district, and shall have been taxed therein, such residence shall be presumed to continue for the purpose of taxation until he shall have acquired another residence in this state or shall have removed from this state. The residence of a person on July first shall

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Report of exempt property.

§§ 9, 15.

be deemed his residence for the purpose of assessment and taxation during that year. If he shall have actually and in good faith changed his residence after July first, and before August first in any year, from one tax district to another, and shall make proof to the assessors at or before their last meeting for the correction of the assessment-roll of such change of residence and that he is assessed in the tax district to which he has removed, his name and the assessment of his personal property shall be stricken from the assessment-roll of the tax district where he resided on July first. In case of any controversy as to the proper place of taxation within the state of any person, his residence for purposes of taxation may be determined by the tax commission, subject to review by the court. (*Amended by L. 1914, ch. 277, and L. 1916, ch. 323, § 3, in effect Apr. 26, 1916.*)

§ 9. **Place of taxation of real property.**—Real property shall be assessed as of July first in the tax district in which it is situated. In all cases the assessment shall be deemed as against the real property itself, and the property itself shall be holden and liable to sale for any tax levied upon it. (*Amended by L. 1911, ch. 315, and L. 1916, ch. 323, § 4, in effect Apr. 26, 1916.*)

§ 15. **Report of exempt property.**—It shall be the duty of the board of assessors of the several towns of this state, and the boards or officials charged with the duty of assessing property for the purposes of taxation in the several cities of the state, to furnish to the clerks of the boards of supervisors of their respective counties, or in the case of the city of New York, to the city clerk of that city, on or before the first day of September in each year, a full and complete list and statement of all property situated within their respective districts exempt or partially exempt from taxation under the laws of this state. Such list and statement shall be made on blanks furnished by the tax commission, and in such form and to contain and set forth all the information relative to such property and the situation and value thereof, as may be required by the tax commission, and to be verified in the same manner as assessments of property for the purposes of taxation, and in the city of New York by the chief deputy of the department of taxes and assessments. The tax commission shall prepare and transmit to the clerk of the board of supervisors in each county and to the city clerk of the city of New York, a sufficient number of such blanks, on or before the first day of June in each year, and the clerks of the boards of supervisors and the city clerk of the city of New York shall forthwith, upon the receipt thereof, distribute the same among the boards of assessors for use in preparing the statement herein required. And it shall be the duty of the clerk of the board of supervisors of each county and of the city clerk of the city of New York, to transmit such completed lists or statements to the tax commission, on or before the first day of October in each year, and the tax commission shall tabulate such

statements, and cause to be published in their annual report to the legislature, a complete tabulated statement, based upon the statement so transmitted to the tax commission, of all real estate in the several counties of the state which is exempt or partially exempt from taxation. Immediately upon the receipt of the completed reports by the various clerks of the boards of supervisors, and the city clerk of the city of New York, those officials shall prepare a tabulated statement of the returns received and shall post a copy thereof in a conspicuous place, and in all cities of the state cause a copy thereof to be published in the official paper or papers of said city twice, with an interval between publications of three weeks, except such cities which publish a complete assessment-roll. The expense of such publication shall be a city charge and shall be audited and paid in the same manner as charges for other city notices are audited and paid. (*Amended by L. 1916, ch. 323, § 5, in effect Apr. 26, 1916.*)

§ 20. **Ascertaining facts for assessment.**—The assessors in each tax district shall annually between January first and July first, ascertain by diligent inquiry all the property and the names of all the persons taxable therein. The comptroller shall on or about April fifteenth in each year transmit to the assessors of each tax district a statement of all lands owned by the state in such district, and such statement shall be used by the assessors in making up their assessment-rolls and shall be considered by them as their authority to assess to the state such of the lands described thereon as are legally subject to taxation. (*Amended by L. 1911, chs. 116, 805, L. 1912, ch. 270, and L. 1916, ch. 323, § 6, in effect Apr. 26, 1916.*)

§ 21. **Preparation of assessment-roll.**—1. The assessors shall prepare an assessment-roll or rolls, the form of which shall be prescribed or approved by the tax commission, so classified and arranged with respect to number of parts and number of columns in each part and with such entries and descriptions as shall be sufficient to identify each separately assessed parcel or portion of real estate with the approximate quantity of the square feet, square rods or acres contained in such parcel or portion of a statement of the linear dimensions thereof; each special franchise and the names of all persons and corporations taxable on personal property, capital stock or capital invested in business and bank stock. Assessments of real property, other than special franchises, shall be carried in a separate part of the roll from the assessments of personal property.

2. The form of assessment-roll prescribed or approved by the tax commission shall provide for the indication thereon, in appropriate columns, of the name of the village, if in a village, the number of the school district and the name or number of any special district in which a special tax is levied for district purposes, in which each parcel or portion of real property and each special franchise described on such roll is situated or in which each person or corporation subject to taxation for personal property in the tax district pursuant to this chapter, resides, carries on business,

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§ 21.

has its principal place of business or in which its operations are carried on or where the personal property is located, as the case may be, and shall also provide for the entry of the assessments of real property, special franchises and personal property respectively, made pursuant to this chapter, and of the apportionments made pursuant to section forty of this chapter.

3. In all cities there shall be an additional column in the assessment-roll before the column in which is set down the value of real property, and in such additional column there shall be set down the value of the land exclusive of the buildings thereon. The total assessment only can be reviewed.

4. When a tax map has been approved by the tax commission, reference to the lot, block and section number or other identification numbers of any parcel on said map shall be deemed a sufficient description of said parcel on the assessment-roll.

5. A separate part shall be provided for the listing of property that is entirely exempt from taxation. If the property is partially exempt it shall be listed with the taxable property.

6. Provision shall also be made thereon for the entry of the amount of tax levied for state, county, city, town, highway or special district purposes, against each parcel or portion of real property, each special franchise and each person or corporation for personal property, together with the date of payment thereof and such other items and details as may be required.

7. The tax commission shall adopt regulations and rules for the preparation and use of the assessment-roll and shall advise with and instruct boards of assessors and other officers as to their duties in respect thereto. (*Amended by L. 1911, ch. 315, L. 1912, ch. 266, L. 1914, ch. 277, L. 1915, ch. 218, and L. 1916, ch. 323, § 7, in effect Apr. 26, 1916.*)

Attack upon assessment; comparison with similar property.—Subd. 3 of this section does not affect the rule that a property owner claiming to be aggrieved by inequality in the assessment of his real property is at liberty to attack the assessment by comparing the gross valuation placed upon his property with the gross valuation of other similar property upon the assessment roll; and that he is also at liberty to compare the assessed valuation placed upon his land alone with the values placed upon the land only in the case of other properties of like character and situation. *People ex rel. Strong v. Hart* (1916), 216 N. Y. 513, affg. 166 App. Div. 907, 150 N. Y. Supp. 1106.

Under subd. 3 (former § 21-a) the petitioner may give testimony as to an alleged overvaluation of the lands and at the same time adopt the figures of the taxing officers so far as the value of the buildings is concerned. *People ex rel. Havemeyer v. Purdy* (1915), 91 Misc. 610, 154 N. Y. Supp. 993.

The legal presumption is that an assessment of property for the purposes of taxation is regular and the determination of the taxing officials will not be disturbed unless it clearly appears that injustice has been done. *People ex rel. Havemeyer v. Purdy* (1915), 91 Misc. 610, 154 N. Y. Supp. 993.

The assessment of the unoccupied lands of a nonresident in a separate part of the assessment roll under a tract designation headed "Talfourd Lawn" is not a compliance with the statute then in force requiring such lands to be placed in a

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separate part of the roll expressly set apart for assessments against the property of nonresidents and designated "lands of nonresidents." *Cardwell v. Clark* (1916), 94 Misc. 433, 158 N. Y. Supp. 300.

An assessment roll on which assessments against individuals for real and personal property are interspersed between the assessment of real property under tract or map designations does not comply with the statute and is void.

§ 21-a. **Assessment rolls in cities.**—*Added by L. 1911, ch. 117 and repealed by L. 1916, ch. 323, § 8, in effect Apr. 26, 1916.*

Note.—The substance of this section re-enacted in § 21 as amended by L. 1916, ch. 323.

§ 21-b. **Assessment of certain real property in Suffolk and Herkimer counties.**—*Added by L. 1912, ch. 269, amended by L. 1914, ch. 484 and repealed by L. 1916, ch. 323, § 9, in effect Apr. 26, 1916.*

§ 23. **Banks to make report.**—The chief fiscal officer of every bank or banking association organized under the authority of this state, or of the United States, shall, on or before the first day of June, in each year, furnish the assessors of the tax district in which its principal office is located a statement under oath of the condition of such bank or banking association on the first day of May next preceding, stating the amount of its authorized capital stock, the number of shares and the par value of the shares thereof, the amount of stock paid in, the amount of its surplus and of its undivided profits, if any, a complete list of the names and residences of its stockholders and the number of shares held by each. In case of neglect or refusal on the part of any bank or banking association to report as herein prescribed, or to make other or further reports as may be required, such bank or banking association shall forfeit the sum of one hundred dollars for each failure, and the additional sum of ten dollars for each day such failure continues, and an action therefor shall be prosecuted by the county treasurer of the county in which such bank or banking association so neglecting or refusing to report is located, and in the city of New York by the receiver of taxes thereof. There shall, in addition to such report, be kept in the office of every such bank or banking association a full and correct list of the names and residences of all stockholders therein, and of the number of shares held by each, and such lists shall be subject to the inspection of the assessors at all times. The list of stockholders furnished by such bank or banking association shall be deemed to contain the names of the owners of such shares as are set opposite them, respectively, for the purpose of assessment and taxation. (*Amended by L. 1916, ch. 323, § 10, in effect Apr. 26, 1916.*)

§ 24. **Bank shares, how assessed.**—In assessing the shares of stock of banks or banking associations organized under the authority of this state or the United States, the assessment and taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state. The value of each share of stock of each

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• §§ 24a, 24b.

bank and banking association, except such as are in liquidation, shall be ascertained and fixed by adding together the amount of the capital stock, surplus and undivided profits of such bank or banking association and by dividing the result by the number of outstanding shares of such bank or banking association. The value of each share of stock in each bank or banking association in liquidation shall be ascertained and fixed by dividing the actual assets of such bank or banking association by the number of outstanding shares of such bank or banking association. The owners of the stock of banks and banking associations shall be entitled to no deduction from the taxable value of their shares because of the personal indebtedness of such owners, or for any other reason whatsoever. This section is not to be construed as an exemption of the real estate of banks or banking associations from taxation. No shares of stock of such banks and banking associations, by whomsoever held, shall be exempt from the tax hereby imposed. (*Amended by L. 1916, ch. 323, § 11, in effect Apr. 26, 1916.*)

Note.—The section has been subdivided by L. 1916, ch. 323, and is re-enacted in this section and in §§ 24a-24g, post.

Tax on stock of bank located in city; remedy against county unlawfully appropriating tax; relief by action and by mandamus; laches.—By virtue of this section the city of Tonawanda is entitled to the tax collected upon the capital stock of a bank located in said city; the sum collected does not belong to the county of Erie. Where a county has unlawfully appropriated taxes upon bank stock, a city entitled to receive the same may enforce its right by action, though, under some circumstances, mandamus is also a proper remedy. But where there has been a long delay by the city in enforcing its right and the moneys collected may have gone into the general fund of the county and have been diverted to other purposes, so that a tax levy may be necessary to satisfy the claim of the city, the writ of mandamus should be denied upon the ground of laches and the city should be left to its remedy by action. *It seems*, that, in any event, where an issue of fact such as laches is raised, an alternative rather than a peremptory writ should issue in cases where mandamus is an appropriate remedy. *People ex rel. City of Tonawanda v. Fitzhenry* (1915), 170 App. Div. 227, 156 N. Y. Supp. 70.

§ 24-a. Notice of assessment to banks or banking associations; complaints.—The assessors of every tax district shall, within ten days after they have completed the assessment of the stock of a bank or banking association, give written notice to such bank or banking association of such assessment of the shares of its respective shareholders and no personal or other notice to such shareholders of such assessment is required. Complaints in relation to the assessments of the shares of stock of banks and banking associations shall be heard and determined as provided in section thirty-seven of this chapter. (*Added by L. 1916, ch. 323, § 12, in effect Apr. 26, 1916.*)

§ 24-b. Bank shares; rate of tax.—The rate of tax upon the shares of stock of banks and banking associations shall be one per centum upon the value thereof, as ascertained and fixed in the manner hereinbefore provided. (*Added by L. 1916, ch. 323, § 12, in effect Apr. 26, 1916.*)

§ 24-c. **Bank shares; exemption from other taxes.**—The said bank tax shall be in lieu of all other taxes whatsoever for state, county or local purposes upon the said shares of stock, and mortgages, judgments and other choses in action and personal property held or owned by banks or banking associations the value of which enters into the value of said shares of stock shall also be exempt from all other state, county or local taxation. (*Added by L. 1916, ch. 323, § 12, in effect Apr. 26, 1916.*)

§ 24-d. **Bank tax; levy by board of supervisors.**—The bank tax herein imposed shall be levied in the following manner: The board of supervisors of the several counties shall, on or before the fifteenth day of December in each year, ascertain from an inspection of the assessment-rolls in their respective counties, the number of shares of stock of banks and banking associations in each town, city, village, school and other special districts, in their several counties, respectively, in which such shares of stock are taxable, the names of the banks issuing the same, respectively, and the assessed value of such shares, as ascertained in the manner provided in this article and entered upon the said assessment-rolls, and shall forthwith mail to the president or cashier of each of said banks or banking associations a statement setting forth the amount of its capital stock, surplus and undivided profits, the number of outstanding shares thereof, the value of each share of stock taxable in said county, as ascertained in the manner herein provided, and the aggregate amount of tax to be collected and paid by such bank and banking association, under the provisions of this article. A certified copy of each of said statements shall be sent to the county treasurer. Provided, that, in the city of New York the statement of the bank assessment and tax herein provided for shall be made by the board of tax commissioners of said city, on or before the fifteenth day of December in each year, and by them forthwith mailed to the respective banks and banking associations located in said city, and a certified copy thereof sent to the receiver of taxes of said city. (*Added by L. 1916, ch. 323, § 12, in effect Apr. 26, 1916.*)

§ 24-e. **Bank tax; warrant for collection.**—The board of supervisors shall issue their warrant or order to the county treasurer on or before the fifteenth day of December in each year, setting forth the number of shares of bank stock taxable in each town, city, village, school and other tax district in said county, in which said shares of stock shall be taxable, the tax rate of each of said tax districts for said year, the proportion of the tax imposed by this chapter to which each of said tax districts is entitled, under the provisions hereof, and commanding him to collect the same, and to pay to the proper officer in each of such districts the proportion of such tax to which it is entitled under the provisions of this chapter. The said county treasurer shall have the same powers to enforce the collection and payment of said tax as are possessed by the officers now charged by law with the collection of taxes, and the said county treasurer shall be entitled

L. 1916, ch. 323.

Taxation of banks.

§§ 24f, 24g.

to a commission of one per centum for collecting and paying out said moneys, which commission shall be deducted from the gross amount of said tax before the same is distributed. In issuing their warrants to the collectors of taxes, the board of supervisors shall omit therefrom assessments of and taxes upon the shares of stock of banks and banking associations. (*Added by L. 1916, ch. 323, § 12, in effect Apr. 26, 1916.*)

§ 24-f. Bank tax; collection and payment.—It shall be the duty of every bank or banking association to collect the tax due upon its shares of stock from the several owners of such shares, and to pay the same to the treasurer of the county wherein said bank or banking association is located, and in the city of New York to the receiver of taxes thereof on or before the thirty-first day of December in said year; and any bank or banking association failing to pay the said tax as herein provided shall be liable by way of penalty for the gross amount of the taxes due from all the owners of the shares of stock, and for an additional amount of one hundred dollars for every day of delay in the payment of said tax. Every bank or banking association so paying the taxes due upon the shares of its stock shall have a lien on the shares of stock, and on all property of the several share owners in its hands, or which may at any time come into its hands, from reimbursement of the taxes so paid on account of the several shareholders, with legal interest; and such lien may be enforced in any appropriate manner. The tax shall be paid by the respective banks in the city of New York to the said receiver of taxes on or before the thirty-first day of December in said year, and said tax shall be collected by the said receiver of taxes and shall be by him paid into the treasury of said city to the credit of the general fund thereof. (*Added by L. 1916, ch. 323, § 12, in effect Apr. 26, 1916.*)

§ 24-g. Bank tax; distributed by boards of supervisors.—The bank tax shall be distributed in the following manner: The board of supervisors of the several counties shall ascertain the tax rate of each of the several town, city, village, school and other special districts in their counties, respectively, in which the shares of stock of banks and banking associations shall be taxable, which tax rates shall include the proportion of state and county taxes levied in such districts, respectively, for the year for which the tax is imposed, and the proportion of the tax on bank stock to which each of said districts shall be respectively entitled shall be ascertained by taking such proportion of the tax upon the shares of stock of banks and banking associations, taxable in such districts, respectively, under the provisions of this chapter as the tax rate of such tax district shall bear to the aggregate tax rates of all the tax districts in which said shares of stock shall be taxable. The clerks of the several cities, villages and school districts to which any portion of the tax on shares of stock of banks and banking associations is to be distributed under this section shall, in writing and under oath, annually report to the board of supervisors of their respective counties, during the first week of the annual session of such board, the tax rate of such

§§ 26-28, 30.

Reports of corporations; tax maps.

L. 1916, ch. 323.

city, village and school district for the year prior to the meeting of each such board. (*Added by L. 1916, ch. 323, § 12, in effect Apr. 26, 1916.*)

§ 26. Notice of assessment to bank or banking association.—*Repealed by L. 1916, ch. 323, § 13, in effect Apr. 26, 1916.*

Note.—Reenacted in § 24-a., ante.

§ 27. Reports of corporations.—The president or other proper officer of every moneyed or stock corporation deriving an income or profit from its capital or otherwise shall, on or before June first, deliver to one of the assessors of the tax district in which the company is liable to be taxed a written statement in the form prescribed by the tax commission specifying:

1. The real property, if any, owned by such company, the tax district in which the same is situated and, unless a railroad corporation, the sums actually paid therefor.

2. The capital stock actually paid in and secured to be paid in, excepting therefrom the sums paid for real property and the amount of such capital stock held by the state and by any incorporated literary or charitable institution, and

3. The tax district in which the principal office of the company is situated or in case it has no principal office, the tax district in which its operations are carried on.

Such statement shall be verified by an officer of the corporation making the report to the effect that it is in all respects just and true. If such statement is not made within twenty days after the first day of June, or is insufficient, evasive or defective, the assessors may compel the corporation to make a proper statement by mandamus. (*Amended by L. 1916, ch. 323, § 14, in effect Apr. 26, 1916.*)

§ 28. Penalty for omission to make statement.—In case of neglect to furnish such statements within thirty days after the time above provided, the company so neglecting shall forfeit to the people of this state for each statement so omitted to be furnished, the sum of two hundred and fifty dollars, and it shall be the duty of the attorney-general to prosecute for such penalty upon information which shall be furnished him by the tax commission. Upon such statement being furnished and the costs of the suit being paid, the tax commission, if it shall be satisfied that such omission was not wilful, may, in its discretion, discontinue such suit. (*Amended by L. 1916, ch. 323, § 15, in effect Apr. 26, 1916.*)

§ 30. Tax map in each tax district.—A tax district may prepare or adopt for the use of the assessors a tax map of the district, or of such portion of the tax district as lies within an incorporated village, on which shall be shown each separately assessed parcel of real property with its boundaries properly marked. When any parcel contains more than one acre its contents in acres shall be shown upon said tax map. Each separately assessed parcel shall be given an identification number or numbers upon

L. 1916, ch. 323.

Assessments; notice of completion.

§§ 34-36.

such map, and such number or numbers shall not be changed except as may be necessary when such parcel is altered or divided or merged with some other parcel. The assessors shall make such changes from year to year upon such tax map as may be necessary to keep the map accurate. Such map shall be prepared and kept in accordance with such rules as the tax commission may, from time to time, prescribe. (*Added by L. 1911, ch. 315, and amended by L. 1916, ch. 323, § 16, in effect Apr. 26, 1916.*)

§ 34. Assessment of omitted property.—The assessors of any tax district shall, upon their own motion, or upon the application of any taxpayer therein, enter in the assessment-roll of the current year any property shown to have been omitted from the assessment-roll of the preceding year, at the valuation of that year, or if not then valued, at such valuation as the assessors shall determine for the preceding year. Assessments of special franchises that were omitted shall be entered at the valuation fixed and equalized by the tax commission. (*Amended by L. 1914, ch. 277, and L. 1916, ch. 323, § 17, in effect Apr. 26, 1916.*)

§ 35. Debts owing to nonresidents of the United States, how assessed.—Every agent in any county of the state of a nonresident creditor having debts owing to him, taxable in any county of the state, shall annually, on or before June first, furnish to the county treasurer of the county where the debtor resides, a true and accurate statement verified by his oath, of such debts owing on the first day of May next preceding in each town or ward in such county. The county treasurer shall, immediately upon the receipt of such statement, make out and transmit to the assessors of every tax district in the county in which any such debtor resides, a copy of as much of such statement as relates to the tax district of such assessors, with the name of the creditor. The assessors on receipt of such statement from the county treasurer shall, within the time in which they are required to complete the assessment-roll, enter therein the name of such nonresident creditor, and the aggregate amount due him in such tax district on the first day of May next preceding, in the same manner as other personal property is entered on the roll, adding the name of the debtor owing such debt. Any agent neglecting or refusing without good cause to furnish such statement to the county treasurer shall forfeit to the county in which the debtor resides the sum of five hundred dollars, recoverable by the district attorney, if the existence of such debts was known to the agent. (*Amended by L. 1916, ch. 323, § 18, in effect Apr. 26, 1916.*)

§ 36. Notice of completion of assessment-roll.—The assessors shall complete the assessment-roll on or before the first day of August, and make out a copy thereof, to be left with one of their number, and forthwith cause a notice to be conspicuously posted in three or more public places

in the tax district, stating that they have completed the assessment-roll, and that a copy thereof has been left with one of their number at a specified place, where it may be seen and examined by any person until the third Tuesday of August next following, and that on that day they will meet at a time and place specified in the notice to review their assessments. In any city the notice shall conform to the requirements of the law regulating the time, place and manner of revising assessments in such city. During the time specified in the notice the assessor with whom the roll is left shall submit it to the inspection of every person applying for that purpose. (*Amended by L. 1909, ch. 403, and L. 1916, ch. 323, § 19, in effect Apr. 26, 1916.*)

Note.—The portion of this section omitted re-enacted in § 36-a, post.

§ 36-a. Completion of assessment-roll; notice to nonresidents.—The assessors shall between the first and fifth day of August mail a notice to each person and corporation nonresident of their tax district, who has filed with the city or town clerk, on or before the fifteenth day of June preceding, a written demand therefor. Such notice shall specify each parcel or portion of real property separately assessed to said nonresident person or corporation and the assessed valuation thereof. Upon application by any nonresident owner of real estate, or by a corporation, having real property in more than one tax district in the county, the assessors shall fix a time subsequent to the third Tuesday in August, but not later than the thirty-first day of August, for a hearing and to review their assessment. (*Added by L. 1916, ch. 323, § 20, in effect Apr. 26, 1916.*)

Note.—Section re-enacts a part of former § 36.

§ 37. Hearing of complaints.—The assessors shall meet at the time and place specified in such notice, and hear and determine all complaints in relation to such assessments brought before them, and for that purpose they may adjourn from time to time. Such complainants shall file with the assessors a statement, under oath, specifying the respect in which the assessment complained of is incorrect, which statement must be made by the person assessed or whose property is assessed, or by some person authorized to make such statement, and who has knowledge of the facts stated therein. The assessors may administer oaths, take testimony and hear proofs in regard to any such complaint and the assessment to which it relates. If not satisfied that such assessment is erroneous, they may require the person assessed, or his agent or representative, or any other person, to appear before them and be examined concerning such complaint, and to produce any papers relating to such assessment with respect to his property or his residence for the purpose of taxation. The assessors shall, after said examination, fix the value of the property of the complainant and for that purpose may increase or diminish the assessment thereof. If any such person, or his agent or representative, shall

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Tax-roll; verification and filing.

§§ 38, 39.

wilfully neglect or refuse to attend and be so examined, or to answer any material question put to him, such person shall not be entitled to any reduction of his assessments. Minutes of the examination of every person examined by the assessors upon the hearing of any such complaint shall be taken and filed in the office of the town or city clerk. (*Amended by L. 1916, ch. 323, § 21, in effect Apr. 26, 1916.*)

§ 38. **Correction and verification of tax-roll.**—When the assessors or a majority of them shall have completed their roll, they shall severally appear before any officer of their county authorized by law to administer oaths and shall severally make and subscribe before such officer an oath in the following form: “We, the undersigned, do severally depose and swear that we have set down in the foregoing assessment-roll all the real estate situated in the tax district in which we are assessors, according to our best information; and that, with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, and with the exception of those cases in which the value of any special franchise has been fixed by the state tax commission, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full value thereof; and, also, that the said assessment-roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll over and above the amount of debts due from such persons, respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full value thereof, according to our best judgment and belief,” which oath shall be written or printed on said roll, signed by the assessors and certified by the officer. (*Amended by L. 1916, ch. 323, § 22, in effect Apr. 26, 1916.*)

§ 39. **Filing of roll and notice thereof.**—In cities the assessment-roll when thus finally completed and verified shall be filed on or before September first, in the office of the city clerk, there to remain for fifteen days for public inspection. The assessors shall forthwith cause a notice to be posted conspicuously in at least three public places in the tax district and to be published in one or more newspapers, if any, published in the city that such assessment-roll has been finally completed and stating that it has been so filed and will be open to public inspection. At the expiration of such fifteen days, the city clerk shall deliver such roll to a supervisor of the tax district embraced therein. In towns, when the assessment-roll shall have been thus finally completed and verified, the assessors shall make two copies thereof, one of which shall be retained by them for the use of themselves and their successors in office, and the other of which, duly certified by the said assessors to be a copy of said assessment-roll, shall, on or before the fifteenth day of September, be filed in the office of the town clerk, and shall thereupon become a public record. The assessors shall forthwith cause a notice to be posted conspicuously in at least

§§ 40, 41.

Apportionment of valuations by assessors.

L. 1916, ch. 323.

three public places in the tax district and to be published in one or more newspapers, if any, published in the town, that such assessment-roll has been finally completed and stating that such certified copy has been so filed. The said original assessment-roll shall on or before the first day of October be delivered to a supervisor of the tax district embraced therein. Notwithstanding the provisions of this section, the board of supervisors of any county may require an additional number of copies of the assessment-rolls of the towns of such county to be made, and specify by whom such additional copies shall be made, the date when the certified copy of the town assessment-roll shall be filed in the office of the town clerk, and the date when the original assessment-roll shall be delivered to the supervisor of the town. (*Amended by L. 1916, ch. 323, § 23, in effect Apr. 26, 1916.*)

§ 40. Assessors to apportion valuation of railroad, telegraph, telephone, pipe line, water or gas companies and of special franchises among school and special districts.—The assessors of each town or city in which a railroad, telegraph, telephone, water pipe line, or gas company, including a company engaged in the business of supplying natural gas, is assessed by them or by the tax commission upon property lying in more than one school district or in one or more special districts in which a tax is levied for district purposes shall after the time fixed for hearing complaints and action thereon and prior to the final completion of the roll, pursuant to section thirty-nine of this chapter, apportion the assessed valuation of the property of each of such corporations so made by them or by the tax commission among such school and special districts. Such apportionments shall be entered by the assessors in the appropriate column of the assessment-roll and a certificate thereof signed by the assessors or a majority of them shall be filed with the town or city clerk within five days thereafter, and thereupon the valuations so apportioned shall become the valuations of such property in such districts for the purpose of taxation for the ensuing year. The town clerk shall furnish the trustees of school districts a certified statement of the valuations apportioned to their respective districts.

In case of the failure of the assessors to act, a supervisor of the town or city shall make such apportionment on request of either the trustee of any school district or the officers of any special district or the corporation assessed. In case of any alteration in any school district affecting the valuation of such property, the officer making the same shall fix and determine the valuations in the districts affected for the current year. (*Amended by L. 1912, ch. 271, L. 1913, ch. 556, and L. 1916, ch. 134, in effect Apr. 6, 1916, and L. 1916, ch. 323, § 24, in effect Apr. 26, 1916.*)

Note.—The section as amended by L. 1916, ch. 323, is here inserted.

§ 41. Neglect or omission of duty by assessors.—The assessors in the execution of their duties, shall use the forms and follow the instructions

L. 1916, ch. 323.

Special franchise report.

§§ 43, 44.

and orders transmitted to them, from time to time, by the tax commission. If any assessor shall neglect or omit to perform any duty, the other assessors shall perform such duty and shall certify upon the assessment-roll the name of the delinquent assessor, stating therein the cause of such omission, and the assessment-roll, when otherwise made and completed in accordance with the requirements of or under this chapter shall be deemed to be the assessment-roll of the tax district. If the assessors shall neglect to meet for the purpose of hearing grievances any person aggrieved by the assessment may appeal to the board of supervisors at its next meeting, which shall have the same power to review and correct such assessment as the assessors have under this article. If any assessor shall refuse or neglect to perform any duty or do any act required of him by this chapter, he shall forfeit to the tax district the sum of fifty dollars, to be recovered by the tax commission. (*Amended by L. 1916, ch. 323, § 25, in effect Apr. 26, 1916.*)

§ 43. **Assessment of special franchises.**—*Amended by L. 1909, ch. 275, L. 1910, chs. 7, 458, L. 1911, ch. 804, and repealed by L. 1916, ch. 334, § 1, in effect Jan. 1, 1917.*

Note.—The provisions of former §§ 43–47, revised in §§ 44–47, post.

§ 44. **Special franchise report to tax commission.**—Every person, copartnership, association or corporation subject to taxation on a special franchise, shall, within thirty days after such special franchise is acquired, make a written report to the tax commission containing a full description of every special franchise possessed or enjoyed by such person, copartnership, association or corporation, a copy of the special law, grant, ordinance or contract under which the same is held, or if possessed or enjoyed under a general law, a reference to such law, a statement of any condition, obligation or burden imposed upon such special franchise, or under which the same is enjoyed, together with any other information relating to the value of such special franchise, required by the tax commission. The tax commission may require an annual report and from time to time a further or supplemental report from any such person, copartnership, association or corporation containing information and data upon such matters as it may specify. Every report required by this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the copartnership making the same, to the effect that the statements contained therein are true. Such commission may prepare blanks to be used in making the reports required by this section. Every person, copartnership, association or corporation failing to make the report required by this section, or failing to make any special report required by the tax commission within a reasonable time specified by it, shall forfeit to the people of the state the sum of one hundred dollars for every such failure and the additional sum of ten dollars for each day

§§ 45, 45a, 45b.

Special franchise assessments.

L. 1916, ch. 334.

that such failure continues, and shall not be entitled to review the assessment by certiorari, as provided by section forty-six of this chapter. Acknowledgment of receipt of blank reports which contain the penalty provisions of this section shall be deemed sufficient notice of such penalties. (*Amended by L. 1916, ch. 334, in effect Jan. 1, 1917.*)

§ 45. Special franchise; full valuation and equalization by tax commission.—The tax commission shall annually fix and determine the full and actual valuation of each special franchise subject to assessment in each city, town or village; shall inquire into and ascertain, as near as may be the percentage of the full and actual value at which other real property in the city, town or village for which such full valuation has been made, is being assessed, and by the rate of equalization so established fix and determine the equalized valuation of each special franchise subject to assessment. (*Former § 45, as amended by L. 1911, ch. 804, repealed and new § 45 added by L. 1916, ch. 334, in effect Jan. 1, 1917.*)

§ 45-a. Hearing on special franchise valuations; notice.—On determining the full and actual valuation of a special franchise and the rate of equalization thereof the tax commission shall immediately give notice in writing to the person, copartnership, association or corporation affected, and to each city, town or village in which such special franchise is subject to assessment, stating in substance that such determinations have been made and the total full and actual valuation and the rate of equalization thereof in each city, town and village, and that the commission will meet at its office in the city of Albany on a day specified in such notice, to hear and determine any complaint concerning such full valuation and the rate of equalization. Such notice must be served at least ten days before the day fixed for the hearing; and it may be served on a copartnership, association or corporation by mailing a copy thereof to it at its principal office or place of business and on a person, either personally or by mailing it to him at his place of business or last known place of residence. In a town said statement shall specify the total amount of the assessment of such special franchise, and the amount thereof in any village or villages therein. Section thirty-seven of this chapter applies so far as practicable to a hearing by the tax commission under this section. (*Former § 45-a, as added by L. 1911, ch. 804, repealed and new § 45-a, added by L. 1916, ch. 334, in effect Jan. 1, 1917.*)

§ 45-b. Special franchises; determination of final full and equalized valuation.—After hearing complaints as to such valuation and rate of equalization of the special franchise the commission shall fix and determine the final full value of each special franchise and ascertain the final rate of equalization and equalize the final full value of each special franchise to such an amount as in its judgment will place the special franchise on the same basis as the assessment of other real property in the city, town

L. 1916, ch. 334.

Special franchise assessments.

§§ 45c, 45d.

or village in which the special franchise is located. In ascertaining the basis of assessment of other real property or determining the final full and actual valuation of a special franchise, the tax commission may, in its discretion, take testimony and hear proof, under oath or otherwise, and may avail itself of all information on the subject appearing of record in its office and all information which it may acquire in the discharge of its duties, and may employ its experts, agents or other persons in procuring any information it may require for such purpose. (*Added by L. 1916, ch. 334, in effect Jan. 1, 1917.*)

§ 45-c. **Certificate of special franchise valuations filed with localities.**—After determining the final full and equalized valuation of a special franchise the tax commission shall file with the clerk of the city, town or village in which such special franchise is subject to assessment, a written statement duly certified by the secretary of the commission of the valuation of each special franchise assessed therein as finally fixed and equalized. In a town said statement shall specify the total amount of the assessment of each special franchise, and the amount thereof in any village or villages therein. In the city of New York said statement shall be filed with the department of taxes and assessments. Such statement shall be filed with the clerk of the village not later than the first day of October and with the clerk of the city, or the department of taxes and assessments in the city of New York, not later than thirty days before the final completion, verification and filing of the assessment-roll. The statement of special franchise valuations in towns shall be made in duplicate, one copy to be filed with the town clerk not later than August first, and the other copy with the clerk of the board of supervisors of the county not later than September first.

Each city clerk shall, within five days after the receipt by him of the statement of the equalized valuations of a special franchise as fixed by the tax commission, deliver a copy of such statement certified by him to the assessors or other officers charged with the duty of making local assessments in said city. Each town clerk shall, within five days after the receipt by him of the statement of equalized valuations, deliver copies of such statement certified by him to the supervisor of the town, and to the assessors of the town for which the assessments have been made.

The final equalized valuation of every special franchise in a city, town or village as so fixed and determined by the tax commission shall be entered by the assessors or other officers thereof in the proper part of the assessment-roll before the final revision and certification of such roll by them and become a part thereof with the same force and effect as if such assessment had been originally made by such assessors. (*Added by L. 1916, ch. 334, in effect Jan. 1, 1917.*)

§ 45-d. **Special franchise; certification of final valuations to owners.**—The tax commission, on filing said statement of the final equalized valua-

tion of a special franchise, shall give to the person, copartnership, association or corporation affected written notice thereof, which notice shall contain a statement of the full and actual value of such special franchise as finally fixed and determined and the amount to which it has been equalized. In a town said statement shall specify the total amount of the assessment of each special franchise, and the amount thereof in any village or villages therein. Such notice may be served on a copartnership, association or corporation affected by mailing a copy thereof to it at its principal office or place of business, and on a person either personally or by mailing it to him at his place of business or last known place of residence. (*Added by L. 1916, ch. 334, in effect Jan. 1, 1917.*)

§ 45-e. **Special franchise assessments subject to all taxes.**—The final equalized valuation of every special franchise as fixed and determined by the tax commission shall be the assessed valuation on which all taxes, based on such special franchise for state, county, city, town, village, school, highway or other district purposes shall be levied for the ensuing year. (*Added by L. 1916, ch. 334, in effect Jan. 1, 1917.*)

§ 45-f. **Information by local assessors.**—The assessors or other taxing officers, or other local officers in any city, town or village or district, or any state or county officer, shall on demand furnish to the tax commission any information required by them for the purpose of determining the full and equalized value of a special franchise. (*Added by L. 1916, ch. 334, in effect Jan. 1, 1917.*)

§ 46. **Certiorari to review assessment.**—An assessment of a special franchise by the tax commission may be reviewed in the manner prescribed by article thirteen of this chapter, and that article applies so far as practicable to such an assessment, in the same manner and with the same force and effect as if the assessment had been made by local assessors; a petition for a writ of certiorari to review the assessment in a city or village must be presented within fifteen days after the final completion and filing of the assessment-roll, and the first posting or publication of the notice thereof as required by law, and in towns within thirty days after the final revision of the roll by the county board of supervisors and the annexation of their warrant thereto. Such writ must run to and be answered by said tax commission and no writ of certiorari to review any assessment of a special franchise shall run to any other board or officer unless otherwise directed by the court or judge granting the writ. In cities a copy of said writ and the petition for same shall be furnished to the corporation counsel or other law officer. An adjudication made in the proceeding instituted by such writ of certiorari shall be binding upon the local assessors and any ministerial officer who performs any duty in the collection of the taxes levied upon said assessment in the same manner as though said local assessors or officers had been parties to the proceeding. (*Amended by L. 1911, ch. 804, and L. 1916, ch. 334, in effect Jan. 1, 1917.*)

L. 1916, ch. 334.

Special franchise assessments.

§§ 47, 48.

Waiver by State officer of time for filing petition; effect upon future cases of permitting review where writ allowed after a statutory time.—No officer of the State can waive the jurisdictional requirement of the Tax Law that a petition for certiorari to review a tax assessment must be filed within a certain time. The fact that an Attorney-General has, at some former time, in a particular case, permitted a review of an assessment where the writ of certiorari was allowed after the expiration of the statutory time, does not establish a rule binding upon the Attorney-General's office in future cases. There is no authority at law for the issuing of a writ of certiorari to review an assessment where the petition is filed several years after the assessment is made. *People ex rel. Central Hudson Gas & Electric Co. v. Woodbury* (1916), 171 App. Div. 300, 157 N. Y. Supp. 29.

§ 46-a. *Effect of L. 1911, ch. 804.—Added by L. 1911, ch. 875 and repealed by L. 1916, ch. 334, in effect Jan. 1, 1917.*

§ 47. Tax commission to appear by counsel; employment of experts.—In any proceeding for the review of an assessment of a special franchise made by the state board of tax commissioners or the tax commission, said tax commission is authorized to appear by counsel to be designated by the attorney-general. The attorney-general or such counsel may employ experts and the compensation of such counsel and experts and their necessary and proper expenses and disbursements, incurred or made in such proceeding, and upon any appeal therein, shall when audited and allowed as are other charges against such tax district, be a charge upon the tax district upon whose rolls appears the assessment sought to be reviewed. Where, in one proceeding, there is reviewed the assessment of a special franchise in more than one tax district, separate accounts shall be rendered for said costs, expenses and disbursements to the proper officer of each of said tax districts and audited and allowed by him as aforesaid. For the purposes of this section, the city of New York shall be deemed one tax district. If provision shall not have been made for the payment of such expense in any year, then the officers who are empowered by law to make such provisions in any county, city, town or other political subdivision of the state, are hereby authorized and directed to raise money to such an amount as may be necessary, in any manner provided by law for meeting expenses in anticipation of the collection of taxes and to pay such expense therefrom. The amount so raised shall be included in the amount to be raised by tax in the ensuing year: (*Amended by L. 1911, ch. 471, L. 1913, ch. 134, and L. 1916, ch. 334, in effect Jan. 1, 1917.*)

§ 48. Deduction from special franchise tax for local purposes.—If, when the tax assessed on any special franchise is due and payable under the provisions of law applicable to the city, town or village in which the tangible property is located, it shall appear that the person, copartnership, association or corporation affected has paid to such city, town or village for its exclusive use within the next preceding year, under any agreement therefor, or under any statute requiring the same, any sum based upon a percentage of gross earnings, or any other income, or any license fee, or any sum of

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money on account of such special franchise, granted to or possessed by such person, copartnership, association or corporation, which payment was in the nature of a tax, all amounts so paid for the exclusive use of such city, town or village except money paid or expended for paving or repairing of pavement of any street, highway or public place, and except in a city of the first class car license fees or tolls paid for the privilege of crossing a bridge owned by the city, shall be deducted from any tax based on the assessment made by the state board of tax commissioners for city, town or village purposes, but not otherwise; and the remainder shall be the tax on such special franchise payable for city, town or village purposes. The chamberlain or treasurer of a city, the treasurer of a village, the supervisor of a town, or other officer to whom any sum is paid for which a person, copartnership, association or corporation is entitled to credit as provided in this section, shall, not less than five nor more than twenty days before a tax on a special franchise is payable, make and deliver to the collector or receiver of taxes or other officer authorized to receive taxes for such city, town or village, his certificate showing the several amounts which have been paid during the year ending on the day of the date of the certificate. On the receipt of such certificate the collector, receiver or other officer shall immediately credit on the tax-roll to the person, copartnership, association or corporation affected the amount stated in such certificate, on any tax levied against such person, copartnership, association or corporation on an assessment of a special franchise for city, town or village purposes only, but no credit shall be given on account of such payment or certificate in any other year, nor for a greater sum than the amount of the special franchise tax for city, town or village purposes, for the current year; and he shall collect and receive the balance, if any, of such tax as required by law. (*Amended by L. 1916, ch. 581, in effect May 17, 1916.*)

§ 49. **Tax on special franchise not to affect other taxes.**—The imposition or payment of a tax on a special franchise as provided in this chapter shall not relieve any association, copartnership or corporation from the payment of any organization tax or franchise tax or any other tax otherwise imposed by article nine of this chapter, or by any other provision of law; but tangible property situated in, upon, under or above any street, highway, public place or public waters, subject to tax as special franchise as described in subdivision six of section two, shall not be taxable except upon the assessment made as herein provided by the tax commission. (*Amended by L. 1916, ch. 334, in effect Jan. 1, 1917.*)

L. 1916, ch. 334, § 11. Apportionments in the year nineteen hundred and seventeen of special franchise assessments by local assessors under section forty of this chapter shall be based on the final equalized valuations certified in said year by the state tax commission, or if none shall have been so certified, upon the equalized valuations of the preceding year.

§ 50. **Equalization by board of supervisors.**—1. The board of supervisors of each county in this state, at its annual meeting, shall examine

the assessment-rolls of the several tax districts in the county, for the purpose of ascertaining whether the valuations in one tax district bear a just relation to the valuations in all the tax districts in the county; and the board may increase or diminish the aggregate valuations of real estate in any tax district, in accordance with the following equalization rule. First, the ratio or percentage which the assessed value of the real property in each district bears to its full value shall be established by the board upon proper inquiry and investigation conducted by it and shall be stated in a resolution by the board after such inquiry and investigation. Second, from such ratio or percentage values, the board shall then determine the aggregate full value of all real property of each tax district by dividing the assessed value thereof by the ratio or percentage value as ascertained and fixed for that district. Third, the average rate of assessment of the real property in the county shall then be determined by dividing the aggregate assessed value of the real property in all the tax districts by the aggregate full value thereof as ascertained in the manner aforesaid. Fourth, the true equalized value for each tax district shall then be determined by multiplying the full value of such real property in that tax district by the average rate of assessment for the county. Fifth, deduct from or add to the assessed value of the several tax districts the difference between the assessed value and the equalized value as so ascertained so that the amount which the respective tax districts are increased or diminished from the assessed value will be shown, and the total assessed value for the county, except as provided in subdivision two of this section, will not be increased or diminished. Any written or documentary evidence upon which the percentages for the several tax districts are determined by the board shall be preserved and an abstract of the same published with the table of rates in the proceedings of the board of supervisors. The table of such percentages, employed in making the equalization, shall be furnished by the clerk of said board to the tax commission and shall also be published in the report of the tax commission.

2. The board of supervisors in any county of the state shall when examining the assessment-rolls of the several tax districts of the county, as above provided, exclude from the tax rolls of said districts, to be prepared by said board, such parcels of real property as have been struck down to the county at a tax sale and not redeemed as provided in section one hundred and fifty-two of this chapter. The county treasurer shall annually between the date of the tax sale and the first day of December next succeeding, prepare and submit to the board of supervisors a list of all such lands so struck down to the county in any year and still remaining unredeemed. No such properties shall be so excluded from said tax rolls except by a resolution of said board adopted at an annual meeting by a vote of a majority of the members thereof. Whenever such real property is so excluded from the tax rolls by the board, the total of the assessed valuations of the real estate of the several tax districts, as the same appear on

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the completed tax rolls, shall be the aggregate valuation of the taxable real estate in the county. (*Amended by L. 1911, ch. 801, L. 1914, ch. 397, and L. 1916, ch. 323, § 26, in effect Apr. 26, 1916.*)

§ 50-a. **Exclusion of shares of stock of banks and banking associations.**—In fixing the aggregate valuation of a tax district for the purpose of equalizing the valuations between the several tax districts within a county, the board of supervisors or commissioners of equalization of such county shall not include the shares of stock of banks or banking associations assessed in such tax district pursuant to article two of this chapter. (*Added by L. 1916, ch. 249, in effect Apr. 18, 1916.*)

§ 52. **Examination of valuations.**—Between the first day of September and the time of the annual meeting of the board of supervisors in each year, the commissioners shall examine the assessment-rolls of the several towns in their county and shall visit each town therein once in each alternate year between such dates, or once in each year when deemed necessary by them, for the purpose of ascertaining whether the valuations in one town or ward bear a just relation to the valuations in all the towns and wards in the county, and they may increase or diminish the aggregate valuations of real estate in any town or ward by adding or deducting such sum upon the hundred in accordance with the rule of equalization specified in section fifty of this chapter, as may, in their opinion, be necessary to produce a just relation between all the valuations of real estate in the county, but they shall in no instance reduce the aggregate valuations of all the towns and wards below the aggregate valuations thereof as made by the assessors. (*Amended by L. 1916, ch. 323, § 27, in effect Apr. 26, 1916.*)

§ 53. **Report to supervisors.**—On or before the fourth day of the annual meeting of the board of supervisors in each year the commissioners shall file with the clerk of such board of supervisors their report of the equalized valuations of real estate, signed by a majority of such commissioners, and the same shall be binding and conclusive on such board of supervisors as an equalization of the assessments of real estate for such year.

The table of percentages and an abstract of the evidence upon which the percentages are determined shall be published in the proceedings of the board of supervisors and a certified copy of the percentages and evidence furnished the tax commission. (*Amended by L. 1916, ch. 323, § 28, in effect Apr. 26, 1916.*)

§ 55-a. **Errors in assessment-rolls.**—An error in the description of a parcel or portion of real property shall not invalidate the assessment against such parcel or portion, if such description is sufficiently accurate to identify the parcel or portion. The entry of the name of the owner, last known owner or reputed owner of a separate parcel or portion of real property shall not be regarded as part of such assessment, but merely as an aid to identify such parcel upon the roll. (*Former § 63, as amended by L. 1911, ch. 315,*

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renumbered and amended by L. 1916, ch. 323, § 29, in effect Apr. 26, 1916.)

Error in or omission of names of owners.—Though, in the assessment of real estate for taxes, the use of the name of only one of several tenants in common in connection with the equivalent term “and others” is an error in the name of the owners it does not affect the validity of the assessment, that contingency being provided for by section 63 (now § 55-a.) of the Tax Law, section 9 of which declares that the assessment “shall be deemed as against the real property itself” and that it “shall be holden and liable to sale for any tax levied upon it.” Where property known as 210 North Clinton street and listed on a well-known, duly authenticated map in general use and filed in the county clerk’s office as block 147 was conveyed as block 146, reference being had to another map, and the assessors in using the term “block 147, No. 210 North Clinton street” did not refer to any map, the assessment is valid even though the names of the owners, all of whom were non-residents, did not appear on the assessment-roll. *Sheldon v. Russell* (1915), 91 Misc. 278, 154 N. Y. Supp. 632.

§ 56. Correction of errors by board of supervisors.—If it shall be made to appear to the board of supervisors of any county, upon the verified petition of the assessors of any tax district:

First. That any property taxable therein has, by any mistake in transcribing or copying the assessment-roll of the preceding year, been placed on the assessment-roll delivered to the supervisor at a valuation less than that actually appearing upon the original roll signed by the assessors, such board shall insert in the assessment-roll of the current year an assessment of the property upon the valuation equal to the difference between the actual valuation made by the assessors and the amount at which, by such mistake, the property was placed upon the roll of the preceding year, and tax the same at the rate per centum imposed upon property in such tax district in the year in which the mistake occurred.

Second. That any taxable property therein has been omitted from the assessment-roll of the preceding year, such board shall place the same on the roll of the current year at its valuation for the preceding year, to be fixed by the assessors in their petition, and shall tax the same at the rate per centum of the preceding year.

Third. That taxable property has been omitted from the assessment-roll for the current year, such board shall place the same thereon at a valuation to be fixed by the assessors in their petition, and shall tax the same at the rate per centum of the current year.

Fourth. That an assessment of the shares of stock of a bank or banking association, as provided in article two of the tax law, has been omitted or erroneously made for the current year, such board shall place the same thereon at a valuation to be fixed by the assessors in their petition and shall tax the same at the rate provided in article two.

A copy of the petition under the second, third or fourth subdivision of this section, with a notice of the presentation thereof to the board of supervisors, shall be served personally on the person or corporation alleged to be liable to taxation for the property omitted from the assessment-roll, at least

ten days before the meeting of the board of supervisors; and the board of supervisors shall take no action on such petition, unless proof of the personal service of such petition and notice be made to them by affidavit. The board of supervisors shall give to the person alleged to be liable to taxation for such property an opportunity to be heard, and on such hearing and review the board of supervisors shall have, as to such omitted property, all the powers of the assessors of a tax district in reviewing and correcting the assessment-roll. The whole amount of tax levied upon land or property omitted in the tax levy of the preceding year shall be deducted from the aggregate of taxation to be levied on the tax district for the current year before such tax is levied. (*Amended by L. 1916, ch. 323, § 30, in effect Apr. 26, 1916.*)

§ 56-a. Correction of assessments, and returning and refunding of erroneous taxes.—The board of supervisors of any county may correct any manifest clerical or other error in any assessment or returns made by any one or more town officers to such board, or which may, or shall have properly come before such board for its action, confirmation or review; and cause to be refunded to any person the amount collected from him of any tax erroneously or improperly assessed or levied, and upon the order of the county court, it shall refund any such tax. In raising the amount so refunded, or necessary to supply the deficiency caused by the correction of any error in such assessment, such board shall, in the same or next ensuing tax-levy, adjust and apportion such amount upon the property of the several towns and wards of the county as shall be just, taking into consideration the portion of the state, county, town and ward included therein, and the extent to which such town or ward has been benefited thereby. Such board shall ascertain, fix and determine the amount which any person or corporation is equitably entitled to receive back from any town for taxes paid while the boundary line between towns was in dispute and cause the same to be levied and collected. (*Added by L. 1916, ch. 323, § 31, in effect Apr. 26, 1916.*)

Note.—Reenacts the substance of County L., § 16, which, however, is not repealed.

§ 58. Levy of tax by supervisors.—The board of supervisors of each county shall, at its annual meeting, levy the taxes for the county, including the state tax, upon the valuations as equalized by it and estimate and set down in a separate column in the assessment-roll of each tax district therein, opposite to the sums set down as the valuation of real and personal property the sum to be paid as a tax thereon, including the state tax, as fixed by the comptroller. Such assessment-roll shall, when the warrant is annexed thereto, become the tax-roll of the tax district, and a copy thereof shall be delivered to the proper supervisor, who shall deliver it to the clerk of the proper city or town to be kept by him for its use. (*Amended by L. 1916, ch. 323, § 32, in effect Apr. 26, 1916.*)

§ 59. **Tax-roll and collector's warrant.**—On or before December first in each year, or such date as may be designated by a resolution of the board of supervisors of any county, not embracing a portion of the forest preserve, not later, however, than the first day of February in each year, the board of supervisors shall annex to the tax-roll a warrant under the seal of the county, signed by the chairman and clerk of the board, commanding the collector of each tax district to whom the same is directed to collect from the several persons named in said tax-roll the several sums mentioned in the last column thereof, opposite their respective names, except taxes upon the shares of stock of banks and banking associations, on or before the first day of the following February, where the same is annexed on or before the first of December, in each year, as above provided. But where, however, the time of annexing the same and performing the several duties herein imposed is deferred to a later date by resolution as aforesaid, then on or before the first day of May, following the said later date, and further commanding him to pay over on or before the said first day of February or first day of May, as the case may be, if he be a collector of a city or a division thereof, all moneys so collected appearing on said roll to the treasurer of the county, or if he be a collector of a town:

1. To the supervisor of the town, all the moneys levied therein for the support of highways and bridges, moneys to be expended by overseers of the poor for the support of the poor and moneys to defray any other town expenses or charges.

2. To the treasurer of the county, the residue of the money so to be collected.

If the law shall direct the taxes levied for any locality for special purpose in a city or town to be paid to any person or officer other than those named in this section, the warrant shall be varied so as to conform to such direction. The warrant shall authorize the collector to levy such taxes by distress and sale, in case of nonpayment. The corrected assessment-roll, or a fair copy thereof, shall be delivered by the board of supervisors to the collector of the tax district on or before December first, in each year, unless another date is designated by the board of supervisors in the manner above specified, then in that event, on or before such date so designated. (*Amended by L. 1916, ch. 323, § 33, in effect Apr. 26, 1916.*)

§ 60. **Statement of taxes upon certain corporations by clerk of supervisors.**—The clerk of each board of supervisors shall, within five days after the tax warrant is completed, deliver to the county treasurer a statement showing the names, valuation of property and the amount of tax of every railroad corporation and telegraph, telephone and electric light line and gas company including a company engaged in the business of supplying natural gas in each tax district in the county, and on refusal or neglect so to do, shall forfeit to the county the sum of one hundred dollars, to be sued for by the district or county attorney in the name of the county.

(Amended by L. 1913, ch. 556, and L. 1916, ch. 323, § 34, in effect Apr. 26, 1916.)

The value of bank stock should be "returned." Atty Genl. Opin., 5 State Dep. Rep. 471 (1915); but see amendment of 1916.

§ 61. Statement of valuation to be forwarded to tax commission.—The clerk of each board of supervisors shall, on or before the second Monday in December, transmit to the tax commission in the form to be prescribed by it a certificate or return of the aggregate assessed and equalized valuation of the real and personal estate in each tax district as the valuation of such real estate has been corrected by such board, and the amount of tax assessed thereon for special district, town, city, county and state purposes. Also the aggregate assessed valuation of bank stock and other personal property exclusive of bank stock classified as follows:

1. Property of resident natural persons assessed pursuant to section twenty-one.
2. Property held by agents, trustees, guardians, executors or administrators, assessed pursuant to sections eight and thirty-three.
3. Property of domestic corporations assessed pursuant to section twelve.
4. Property of nonresident natural persons assessed pursuant to subdivision one of section seven.
5. Property of nonresident natural persons assessed pursuant to subdivision two of section seven.
6. Property of foreign corporations assessed pursuant to section seven.

In the city of New York such report shall be made by the department of taxes and assessments.

The tax commission shall certify to the comptroller, on his request, before the thirty-first of December in each year, such extracts or items, from the returns above mentioned, as he may desire. (Amended by L. 1911, ch. 118, and L. 1916, ch. 323, § 35, in effect Apr. 26, 1916.)

§ 62. Abstract of warrant to be furnished county treasurer.—On or before the first day of December in each year, the clerk of the board of supervisors shall transmit to the treasurer of the county an abstract of the tax-rolls, stating the names of the collectors, the amount of money which each is to collect, the purpose for which it is to be collected, and the persons to whom and the time when it is to be paid. The county treasurer, on receiving such account, shall charge to each collector the amount to be collected by him. (Amended by L. 1916, ch. 323, § 36, in effect Apr. 26, 1916.)

§ 63. Errors in assessment-rolls.—Renumbered § 55-a and amended by L. 1916, ch. 323, § 29. See § 55-a.

§ 64. Statistics of taxation, revenue and debt.—The comptroller shall collect in such detail as may be desirable statistical information relative to the assessment and collection of taxes and other revenue of the municipal-

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ities within the state, and of the extent and character of the indebtedness of the several municipalities, and of the provisions and operation of sinking funds for the extinction of such indebtedness. It shall be the duty of all taxing officials and financial officers of any municipality to furnish all information requested by the comptroller. The comptroller shall furnish an abstract of such statistical information to the state tax commission for publication in the annual report of such commission. (*Added by L. 1911, ch. 119, and amended by L. 1916, ch. 323, § 37, in effect Apr. 26, 1916.*)

§ 69. Notice by collector; general.—Every collector, upon receiving a tax-roll and warrant, shall forthwith cause notice of the reception thereof to be posted in five conspicuous places in the tax district, specifying one or more convenient places in such tax district, where he will attend from nine o'clock in the forenoon until four o'clock in the afternoon, at least three days, and if in a city, at least five days, in each week for thirty days from the date of the notice, which shall be the date of the posting or first publication thereof, which days shall be specified in such notice, for the purpose of receiving the taxes assessed upon such roll. The collector shall attend accordingly, and any person may pay his taxes to such collector at the time and place so designated, or at any other time or place. In a city, the notice in addition to being posted shall be published once in each week, for two weeks successively, in a newspaper published in such city. (*Amended by L. 1916, ch. 323, § 38, in effect Apr. 26, 1916.*)

Note.—Matter omitted re-enacted in § 69-a, post.

§ 69-a. Nonresidents; statement of taxes.—On the written demand of a nonresident owner of real property included in such tax-roll, and the payment by such owner to the collector of the sum of twenty-five cents, the collector shall within twenty-four hours after the receipt of such demand mail in a postpaid envelope directed to such nonresident owner, to the address to be furnished in such demand, a statement of the amount of taxes assessed against such property with a notice of the dates and places fixed by him for receiving taxes. (*Added by L. 1916, ch. 323, § 39, in effect Apr. 26, 1916.*)

Note.—Re-enacts a part of former § 69.

§ 70. Notice by collector; nonresidents in towns.—A person or corporation who is the owner of, or liable to assessment for, an interest in real property situated and liable to assessment and taxation in a town in which he or it is not actually a resident may file with the town clerk of such town a notice stating his name, residence and post office address, or in case of a corporation, its principal office, a description of the property sufficient to identify the same, and if situated in a village or school district, the name of each such village and number and designation of each such school district. Such notice shall be valid and continue in effect until cancelled

by such person or corporation. The town clerk shall, within five days after the delivery of the warrants for the collection of taxes in such tax districts, furnish to the collectors of the town, and the collector of each village and school district in which such real property is situated, and such collectors shall within such time apply for, a transcript of all notices so filed, and each of such collectors shall within five days after the receipt of such transcripts mail to each person or corporation filing such notice, at the post office address stated therein, a statement of the amount of taxes due on said property and the times and places at which the same may be paid. In case said statement shall not be furnished as herein provided, such person or corporation shall not be liable for fees for collection in excess of one per centum. Upon the filing of such notice the town clerk shall be entitled to receive a fee of one dollar from the person or corporation offering such notice, which shall be in full for all services rendered hereunder. (*Amended by L. 1909, ch. 207, and L. 1916, ch. 323, § 40, in effect Apr. 26, 1916.*)

§ 70-a. **Notice by collector; nonresidents in cities.**—A person or corporation who is the owner of, or liable to assessment for, an interest in real property situated and liable to assessment and taxation in any city of this state in which he or it is not actually a resident, may file with the city clerk of such city a notice stating his name, residence and post office address, or in case of a corporation, its principal office, and a description of the property sufficient to identify the same. Such notice shall be valid and continue in effect until cancelled by such person or corporation. The city clerk shall, within five days after the delivery of the warrants for the collection of any tax in any such tax district, furnish to the collector or to the person by whatever name of office charged with the collection of such taxes, and such collector, or other person, shall within such time apply for a transcript of all notices so filed and each such collector or other person, within five days after the receipt of such transcripts, shall mail to each person or corporation filing such notice, at the post office address stated therein, a statement of the amount of taxes due on such property and the times and places at which the same may be paid. In case said statement shall not be furnished as herein provided, such person or corporation shall not be liable for fees for collection in excess of one per centum and in all cases where, by the provisions of any special law, no fee is charged where such tax is paid within thirty days or more after the delivery of such tax-roll and warrant and the publication of such notice, no fee shall be charged or collected by such collector for the collection of such tax within the time limited by such special law for the payment of such tax. Upon the filing of such notice, the city clerk shall be entitled to receive a fee of one dollar from the person or corporation offering such notice, which shall be in full for all services rendered herein. (*Added by L. 1915, ch. 485, and amended by L. 1916, ch. 323, § 41, in effect Apr. 26, 1916.*)

§ 70-b. **Receipts for taxes.**—Every collector of taxes shall deliver or upon request forward by mail, a receipt wholly written with ink or partly printed and filled out with ink to each person paying a tax, specifying the date of such payment, the name of such person, the description of the property as shown on the assessment-roll, the name of the person to whom the same is assessed, the amount of such tax, and the date of delivery to him of the assessment-roll on account of which such tax was paid. For the purpose of giving such receipt, each collector shall have a book of blank receipts, so arranged that when a receipt is torn therefrom a corresponding copy or stub will remain. The tax commission shall prescribe the form of such receipts, stubs and books and they shall be furnished to the town collector by the board of supervisors, at the expense of the county; to the city collector by the common council, at the expense of the city; to the village collector by the village trustees at the expense of the village; to the school collector by the trustee or trustees at the expense of the school district. The expense of mailing receipts shall be a proper charge against the city, town, village or school district. At the time of giving such a receipt the collector shall make the same entries on the corresponding copy or stub as are required to be made on the receipt. Such book shall be subject to public inspection and shall be filed by the collector with his return, together with the assessment-roll in the office of the county treasurer, or such officer or board to which such collector makes his return. (*Former § 94, as amended by L. 1911, ch. 579, and L. 1914, ch. 483, renumbered and amended by L. 1916, ch. 323, § 42, in effect Apr. 26, 1916.*)

§ 71. **Collection of taxes; sale of personal property.**—After the expiration of notice period thirty days, as provided in section sixty-nine of this chapter, the collector shall call, at least once, on every person taxed upon such roll whose taxes are unpaid, at his usual place of residence, if he is an actual inhabitant of such tax district, and demand payment of the taxes charged to him on his property. If the owner of a parcel or portion of real property is a resident of the tax district in which such parcel or portion of real property is assessed, and his name is correctly entered on the assessment-roll, he shall be personally liable for the tax assessed against such parcel or portion of real property. If any person shall neglect or refuse to pay any tax imposed on him, the collector shall levy upon any personal property in the county belonging to or in the possession of any person who ought to pay the tax, and cause the same to be sold at public auction for the payment of such tax, and the fees and expenses of collection; and no claim of property to be made thereto by any other person shall be available to prevent such sale. Public notice of the time and place of sale of the property to be sold shall be given by posting the same in at least three public places in the tax district where the sale is to be made, at least six days previous thereto. If the proceeds of such sale shall be more than

the amount of such tax, the fees of the collection and the expenses of the sale, the surplus shall be paid to the person against whom the tax was assessed. If any other person shall claim the surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for the payment of whose tax the sale was made, such surplus shall be paid to such other person. If such claim be contested by the person for the payment of whose tax the property was sold, such surplus shall be paid over by the collector to the supervisor of the town, who shall retain the same until the rights of the parties thereto shall be determined by due course of law, or by agreeing in writing made by them and filed with the supervisor. The collector upon payment of the taxes shall state in the column of the tax-roll provided therefor, the date of such payment, and shall write his name after such date. (*Amended by L. 1916, ch. 323, § 43, in effect Apr. 26, 1916.*)

§ 76. Collection of unpaid taxes on debts owing to nonresidents of the United States.—If it shall appear by the return of any collector that a tax imposed upon a debt owing to a person residing out of the United States remains unpaid, the county treasurer shall, after the expiration of twenty days from such return, issue his warrant to the sheriff of any county in this state where any debtor of any such nonresident creditor may reside, commanding him to make of the real and personal property of such nonresident the amount of such tax, to be specified in a schedule annexed to the warrant, with his fees and the sum of one dollar for the expense of issuing such warrant, and to return the warrant to the treasurer issuing the same, and to pay over to him the money which shall be collected by virtue thereof, except the sheriff's fees, by a day therein to be specified within sixty days from the date thereof. The taxes upon several debts owing to a nonresident shall be included in one warrant. The taxes upon several debts owing to different nonresidents may be included in the same warrant, and the sheriff shall be directed to levy the sum specified in the schedule annexed, upon the real and personal property of the nonresidents, respectively, opposite to whose names, respectively, such sums shall be written, with fifty cents for the expenses of the warrant. Such warrant shall be a lien upon and shall bind the real and personal property of the nonresidents against whom issued from the time an actual levy shall be made upon any property by virtue thereof, and the sheriff to whom the warrant shall be directed shall proceed upon the same, in all respects, with like effect, and in the same manner, as prescribed by law in respect to execution against property issued upon judgment rendered in the supreme court, and shall be entitled to the same fees for his services in executing the same, to be collected in the same manner. (*Amended by L. 1916, ch. 323, § 44, in effect Apr. 26, 1916.*)

§ 77. Return of warrant for collection of taxes on debts owing to nonresidents; neglect to make return.—If any sheriff shall neglect to return any

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such warrant as directed therein, or to pay over any money collected by him in pursuance thereof, he shall be proceeded against in the supreme court by attachment in the same manner, and with like effect, as for a similar neglect in reference to an execution issued out of the supreme court in a similar action, and the proceedings therein shall be the same in all respects. If any such warrant shall be returned unsatisfied, wholly or partly, the county treasurer may obtain an order from a judge of the supreme court of the district, or a county judge of the county, of such treasurer issuing the warrant, requiring such nonresident or any person having property of such nonresident or indebted to him, to appear and answer concerning the property of such nonresident. The same remedies and proceedings may be had in the name of such county treasurer or comptroller before the officer granting such order, and with a like effect, as are provided by law in proceedings against a judgment debtor supplementary to execution against him, returned wholly or in part unsatisfied. The expenses of a county treasurer, and such compensation as the board of supervisors may allow him for his services under this section, and for making and transmitting to the assessors of the several towns of his county an abstract or copy of the statements of the agents of nonresident creditors, shall be a county charge. (*Amended by L. 1916, ch. 323, § 45, in effect Apr. 26, 1916.*)

§ 79. **Payment of taxes on part of property.**—The collector shall receive the tax on personal property, or on part of any lot, piece or parcel of land charged with taxes, provided the person paying such tax shall furnish such particular specification of such part, and in case the tax on the remainder thereof shall remain unpaid the collector shall enter such specification on his return to the county treasurer, clearly showing the part on which the tax remains unpaid, and if the part on which the tax shall be so paid shall be an undivided share, the person paying the same shall state to the collector who is the owner of such share, and the collector shall enter the name of such owner on his account of arrears of taxes, and such share shall be excepted in case of a sale for the tax on the remainder. (*Amended by L. 1916, ch. 323, § 46, in effect Apr. 26, 1916.*)

§ 81. **Fees of collector.**—On all taxes paid within thirty days from the date of notice that he has received the roll, the collector shall be entitled to receive, if the aggregate amount shall not exceed two thousand dollars, two per centum, and otherwise one per centum, in addition thereto. On all taxes collected after the expiration of such period of thirty days, the collector shall be entitled to receive five per centum in addition thereto. The collector shall be entitled to receive from the county treasurer two per centum as fees for all taxes returned to the county treasury as unpaid. In Suffolk county no fees shall be paid by the county treasurer on returned taxes. (*Amended by L. 1909, ch. 240, and L. 1916, ch. 332, in effect Apr. 27, 1916.*)

§ 82. **Return by collector of unpaid taxes.**—Each collector shall immediately upon the expiration of his warrant make and deliver to the county treasurer an account of unpaid taxes, upon the tax-roll annexed to his warrant, which he shall not have been able to collect, verified by his affidavit, that the sums mentioned therein remain unpaid, and that he has not, upon diligent inquiry, been able to discover any personal property out of which the same could be collected by levy and sale, and upon the verification of the said account by the county treasurer he shall be credited by the county treasurer with the amount of such account. In making such return of unpaid taxes, the collector shall add thereto five per centum of the amount thereof. In case such tax is uncollected upon lands assessed to a resident he shall also state the reason why the same was not collected. In the county of Suffolk such return shall consist of the tax-roll and warrant together with the affidavit of the collector known also as the receiver of taxes that the taxes therein appearing, not marked paid, remain unpaid and that he has not upon diligent inquiry been able to discover any personal property out of which the same could be collected by levy and sale, together with a statement of the total amount of such unpaid taxes, and that he has in an appropriate column in said tax-roll, opposite the tax levied upon each separate parcel, or person therein named or described, inserted five per centum of the amount of the unpaid tax, and no separate copy or account of such unpaid taxes shall be made or required of collectors, or receivers in such county. Any collector who has heretofore failed in making such return of unpaid taxes, may make such return, whether his term of office has expired or not, verified by his affidavit, to the county treasurer any time within eight years after such failure and before the lands against which said taxes are assessed are advertised for sale pursuant to this chapter, and in case any collector shall heretofore or hereafter fail to add said five per centum the county treasurer shall add the same. Such return shall be indorsed upon or attached to said roll, and shall, subject to the provisions of this section, be in the form to be prescribed by the state board of tax commissioners. Such tax and percentage may be paid to the county treasurer at any time before a return is made to the comptroller, or in the county of Suffolk such tax, percentage and interest at the rate of ten per centum per annum computed from the first day of February after the same was levied may be paid to the county treasurer at any time before the first day of August succeeding the date of the warrant and thereafter at any time before the sale of the land for such unpaid tax, upon the payment of such tax, percentage and interest at the rate of ten per centum per annum, computed from the first day of February after the same was levied and the cost of advertising the land for sale for such unpaid taxes as apportioned by the county treasurer among the several parcels liable to be sold. The county treasurer in counties in which lands are sold by him for the nonpayment of taxes, is hereby authorized to incur and pay for such expenses as he may deem necessary for the examination of col-

L. 1916, ch. 323. Appointment of collector in case of vacancy. §§ 85, 86.

lector's returns and descriptions of property to be sold pursuant to this chapter, and the procurement of proper collector's returns and the examinations and procurement of matters and facts as he may deem necessary to make a valid tax sale hereunder, but such expense shall not exceed the amount of the five per centum added as aforesaid. (*Amended by L. 1916, ch. 323, § 47, in effect Apr. 26, 1916, and L. 1916, ch. 332, in effect Apr. 27, 1916.*)

Note.—The section as amended by L. 1916, ch. 332, is here included.

§ 85. Extension of time for collection.—The county treasurer, upon application of the supervisor of any town or common council of any city in his county, may extend the time for collection of taxes remaining unpaid to a day not later than April first, following, in case the collector shall pay over all moneys collected by him, and renew his bond in a penalty twice the amount of the taxes remaining uncollected, approved by the proper officer upon filing the same, as the original bond is required to be filed, and delivering a certified copy thereof to such treasurer. Collectors and receivers of taxes who have filed a bond as required by statute, shall not be required to renew their bonds. This section shall not affect any special law relating to the extension of time for the collection of taxes, nor be construed to extend the time for the payment of the state tax by the county treasurer, as required by this chapter. (*Amended by L. 1910, ch. 332, and L. 1916, ch. 323, § 48, in effect Apr. 26, 1916.*)

§ 86. Appointment of collector in case of vacancy.—If a person chosen to the office of collector of a town shall refuse to serve or be disabled from entering upon or completing the duties of his office from any cause, the town board shall forthwith appoint a collector for the remainder of the year, who shall give the same undertaking, be subject to the same duties and penalties and have the same powers and compensation as the collector in whose place he was appointed. The supervisor of the town shall forthwith give notice of such appointment to the county treasurer. Such appointment shall not exonerate the former collector or his sureties from any liability incurred by him or them. If a warrant shall have been issued by the board of supervisors before the appointment of a collector to fill a vacancy or before the appointment of a collector under this section, the original warrant, if obtainable, shall be delivered to the collector so appointed and shall give him the same powers as if originally issued to him. If such warrant is not obtainable, a new one shall be issued by the chairman and clerk of the board of supervisors of the county, directed to the collector appointed, with the same force and effect as if originally issued to him. Upon any such appointment, the supervisor of the town, if he shall deem it necessary, may extend the time limited for the collection of taxes, for a period not exceeding thirty days, and forthwith give notice of such extension to the county treasurer. (*Amended by L. 1916, ch. 323, § 49, in effect Apr. 26, 1916.*)

§ 88-a. **Reassessment of taxes levied on imperfectly described real property.**—The county treasurer of any county from which accounts of unpaid taxes are not returned to the comptroller shall examine the accounts of arrears of taxes received from the collector of each tax district and shall reject all taxes charged on real property deemed to be so imperfectly described or erroneously assessed, in form or substance, that the collection of the same by the sale of such real property cannot be enforced, and shall, on or before May first, deliver a transcript thereof to the supervisor of the tax district in which the real property on which taxes have been so rejected shall be located. Such supervisor shall, if in his power, within thirty days thereafter, cause an accurate description of such real property to be made and returned to such treasurer, with the correct amount of taxes thereon, each kind of tax being stated separately, and if necessary, he may cause a survey and map of any of such real property to be made, and the expense of such survey and map on or for each lot or parcel shall be returned to such treasurer and be a legal charge upon such real property and be collected with the taxes thereon. A statement of the taxes on real property in each tax district remaining so rejected on the first day of July, including the amount of taxes, fees and interest thereon, shall be forwarded by the treasurer to the supervisor of the tax district in which such real property was assessed, and such supervisor shall, prior to the first day of the annual meeting of the board of supervisors in such county, add to the assessment-roll of the tax district in which the real property is situated, for the then current year, an accurate description of such real property, the correct amount of taxes thereon, the tax of each year and kind of tax separately, stating that it is a reassessment, and charge the same therewith. The board of supervisors shall direct the collection of such taxes so added to the assessment-roll, and they shall be considered the taxes of the year in which the description shall be perfected. If such tax be not levied upon such real property as herein required, the board of supervisors shall cause the same with interest thereon at the rate of ten per centum per annum, to be levied upon the tax district in which originally assessed and collected with the other taxes of the same year. (*Added by L. 1913, ch. 686, and amended by L. 1916, ch. 323, § 50, in effect Apr. 26, 1916.*)

§ 89. **Unpaid taxes on resident real property to be reassessed.**—When the tax on any real property, not assessed as nonresident, is returned as unpaid and so remains, the county treasurer shall, unless such tax shall have been rejected as provided by section eighty-eight-a, immediately deliver a transcript thereof to the supervisor of the tax district in which such tax was assessed. Such supervisor shall, if in his power, within thirty days thereafter, cause an accurate description of such real property to be made and returned to said treasurer, with the correct amount of taxes thereon, each kind of tax being stated separately, and if necessary, he may cause a sur-

L. 1916, ch. 332.

Sale for unpaid taxes.

§§ 131, 132, 134, 138.

vey and map of any of said real property to be made, and the expense of such survey and map on or for each lot or parcel shall be returned to said treasurer, and be a legal charge upon such real property and be collected with the taxes thereon. The amount of such tax shall bear interest at the rate of ten per centum per annum from the first day of February until paid, or until the sale of such property to satisfy such tax by the county treasurer, or if the property is located in a county embracing a portion of the forest preserve, until the return of such unpaid tax to the comptroller. And such real property and the tax thereon shall be regarded for all purposes of assessment, collection and sale as nonresident, and subject to all the provisions of the tax law in relation to nonresident real property and nonresident taxes. (*Amended by L. 1913, ch. 666, and L. 1916, chs. 323 and 332, in effect Apr. 27, 1916.*)

§ 94. Receipts for taxes.—*Renumbered § 70-b and amended by L. 1916, ch. 323, § 42. See § 70-b, ante.*

§ 131. Comptroller's deed and application therefor.

Application.—As section 154 of the Tax Law provides that "if such real estate be not redeemed as herein provided the county treasurer shall execute to the purchaser a conveyance" etc., the provision of section 131 of the Tax Law that after one year from the time of a tax sale the comptroller shall, after application in writing therefor, execute to the owner of the tax certificate a conveyance of any land sold by him for taxes and not redeemed does not apply to deeds executed by the county treasurer. *Sheldon v. Russell (1915), 91 Misc. 278, 154 N. Y. Supp. 632.*

§ 132. Effect of former deeds.

Application within one year.—The provision of this section that an application or action to challenge the validity of a tax sale made by the comptroller, a county treasurer or a county judge prior to 1895 must be made within one year from June 15, 1896, is a statute of limitation and cannot be taken advantage of unless pleaded. *Cardwell v. Clark (1916), 94 Misc. 433, 158 N. Y. Supp. 300.*

§ 134. Notice to occupants.

Failure to serve notice to redeem.—Where the purchaser of forest land at a tax sale held by the state comptroller does not show that he has ever been in possession of the land described in the comptroller's deed to him, he acquires no title thereunder and the record thereof in the absence of proof of service of the notice to redeem required by this section is a nullity and the deed itself will be declared null and void. Where, in an action to cancel a tax deed given by the state comptroller to certain forest lands to which plaintiffs claim ownership, it appeared that their testator who had acquired said lands by purchase lawfully entered thereon and was in possession thereof at the time of the making of the assessment, the tax sale and the giving of the tax deed to defendant and had during all of that time the actual, lawful and exclusive use and possession of the land exercising control and dominion over it, testator was entitled to notice to redeem under this section, and the relief sought is authorized by section 132 of the Tax Law. *Nichols v. Kellas (1915), 90 Misc. 432, 154 N. Y. Supp. 22.*

§ 138. Lien of mortgage not affected by tax sale.

Recording notice of tax sale.—Where the certificate of the county treasurer that due notice of the tax sale was served upon the occupant and that the lands remained

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Redemption by land owner.

L. 1916, ch. 332.

unredeemed is recorded with the tax deed, there is a sufficient compliance with the Tax Law that such notice be recorded with the conveyance. *Sheldon v. Russell* (1915), 91 Misc. 278, 154 N. Y. Supp. 632.

Avoiding tax deeds.—The want of (1) the county treasurer's certificate to the supervisor of unpaid taxes; (2) the certificate of the supervisor of the completed description of the premises; (3) the certificate of the county treasurer that he had examined and compared the collector's return with the tax roll, and (4) the failure to serve the written notice of sale on the mortgagee as required by sections 138 and 139 of the Tax Law are ineffectual to avoid tax deeds. *Sheldon v. Russell* (1915), 91 Misc. 278, 154 N. Y. Supp. 632.

§ 152. Redemption.—The owner, occupant or any other person having an interest in any real estate sold for taxes as aforesaid may redeem the same at any time within one year after the last day of such sale, by paying to the county treasurer of the county, for the use of the purchaser, the sum mentioned in his certificate, together with interest thereon at the rate of ten per centum per annum, to be computed from the date of such certificate, and any tax which the holder of said certificate shall have paid between the days of sale and redemption, provided such purchaser shall have notified the county treasurer thereof immediately upon the payment of such tax, together with the share of the expense of the publication of notices to redeem the real estate sold in such county for unpaid taxes, as apportioned by the county treasurer to the real estate so redeemed, which expense shall be in the first instance a county charge and shall be at the same rate as that provided for the publication of notices of tax sales. In case any parcel of real estate mentioned in such notice to redeem shall not be redeemed within the one year allowed by law for such redemption then and in that event the share of the expense of the publication of notices to redeem such unredeemed real estate sold in any such county for unpaid taxes, as apportioned by the county treasurer, together with interest thereon for one year at the rate of ten per centum per annum, shall be laid before the board of supervisors of such county for reassessment as are other taxes and shall be by such board of supervisors reassessed upon the assessment roll of the current year against such real estate and shall be a lien thereon. (*Amended by L. 1916, ch. 332, in effect Apr. 27, 1916.*)

§ 154. Conveyance by county treasurer.

Statement of title or interest conveyed.—Where the county treasurer in a tax deed immediately following the description inserted the following: "So far as appears from the record the title and interest hereby conveyed is the title and interest of Fred Tarbell," in compliance with this section which requires the county treasurer to include in the deed "a specific statement of whose title or interest is thereby conveyed so far as appears on the record," the deed is a valid conveyance of Fred Tarbell's interest in the property. *Sheldon v. Russell* (1915), 91 Misc. 278, 154 N. Y. Supp. 632.

§ 170-c. Expenses.—The commissioners, the deputy tax commissioners, the secretary, agents, experts, statisticians, tax assistants and other employees of the commission shall be entitled to receive from the state their

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§ 171.

actual and necessary expenses while engaged, outside of the city of Albany, in the performance of their duties. Detailed statements of such expenses, duly verified, shall be submitted bearing the approval of the president of the commission, except those rendered by the commissioners need not be approved by the president. (*Added by L. 1915, ch. 317, and amended by L. 1916, ch. 323, § 52, in effect Apr. 26, 1916.*)

§ 171. Powers and duties of state tax commission.—The state tax commission shall:

First. Investigate and examine, from time to time, as to the methods of assessment within the state, and confer with, advise, assist and direct assessors and other officials charged by the statutes of this state with duties relating to the assessment of property for taxation.

Second. Furnish local assessors with such information and instructions as may be necessary or proper to aid them in making assessments. Assessors shall comply with such instructions and their compliance may be enforced by the commission.

Third. Make such reasonable rules and regulations, not inconsistent with law, as may be necessary for the exercise of its powers and the performance of its duties under this chapter, and prescribe the form of blanks, reports, assessment-rolls, and other records relating to the assessment of property for taxation, and furnish such forms to assessors and other officers at the expense of the state. Local assessors shall follow the forms so prescribed and the commission shall enforce their use.

Fourth. On and after April fifteenth, nineteen hundred and fifteen, assess, determine, revise, readjust and impose the corporation taxes under article nine of this chapter.

Fifth. As provided in article two of this chapter fix and determine the full value of special franchises and equalize the same with other real property in the town, city or village in which the special franchises are situated.

Sixth. Administer, supervise and enforce the tax on mortgages as provided in article eleven of this chapter.

Seventh. Take testimony and proofs, under oath, with reference to any matter within the line of its official duty. Any member of such commission may be designated for that purpose.

Eighth. Require from all state and local officers such information as may be necessary for the proper discharge of its duties.

Ninth. Hold meetings at an office to be assigned it in one of the state buildings at Albany, at such times as may be fixed by the president or a majority of the commission or by adjournment thereof, or at such other places as it may designate.

Tenth. Compile and publish statistics relating to state and local taxation and assessments therefor.

Eleventh. Have general supervision of the assessment of property for

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State tax commission.

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taxation throughout the state, make investigations thereof and of the general system of state taxation from time to time.

Twelfth. To inquire into the provisions of the laws of other states and jurisdictions; to confer with tax commissioners of other states regarding the most effectual and equitable methods of assessment and taxation, and particularly regarding the best methods of reaching all property and avoiding conflicts and duplication of taxation of the same property, and to recommend to the legislature such measures as will bring about uniformity of methods of assessment and harmony and co-operation between the different states and jurisdictions in matters of taxation.

Thirteenth. Perform the other powers and duties conferred upon it by law.

Fourteenth. Prepare an annual report to the legislature and recommend such changes or amendments to the tax laws as it may deem advisable. (*Amended by L. 1915, ch. 317, and L. 1916, ch. 323, § 53, in effect Apr. 26, 1916.*)

§ 171-a. Administer oaths and compel testimony.—The members of the tax commission, their deputies, secretary or other officer or employee duly designated and authorized by the commission for that purpose shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of the powers or duties of the commission under this article. The commission shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents pertinent to the investigations and inquiries which it is authorized to conduct, and to examine them in relation to any matter which it has power to investigate and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the tax commission or excused from attendance.

A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the commission's subpoenas.

Any person who shall testify falsely in any material matter pending before the commission shall be guilty of and punishable for perjury.

The officers who serve the commission's summons or subpoenas and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record. (*Added by L. 1915, ch. 317, and amended by L. 1916, ch. 323, § 54, in effect Apr. 26, 1916.*)

§ 171-b. Conference of local assessors.—The commission may request the local assessors of every tax district in the state to meet with the commission once in two years, upon a day and at a place designated, for the purpose of considering matters relating to taxation, securing more uniformity of valuation throughout the state, and discussing and formulating desir-

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State tax commission.

§§ 172-173a.

able changes in the laws relating to taxation and method of assessment. The traveling and other necessary expenses incurred by the local assessors in attending such meeting shall be a charge against the county within which the district which they represent is located. In counties wholly within a city such expenses shall be a charge against said city. (*Added by L. 1915, ch. 317, and amended by L. 1916, ch. 323, § 55, in effect Apr. 26, 1916.*)

§ 172. **Official seal.**—The state tax commission shall have and use an official seal; and the records, its proceedings and copies of all papers and documents in its possession and custody may be authenticated in the usual form, under such seal and the signature of any one of the tax commissioners, deputy commissioner or the secretary, and shall be received in evidence in the same manner and with like effect as deeds regularly acknowledged or proven. (*Amended by L. 1915, ch. 317, and L. 1916, ch. 323, § 56, in effect Apr. 26, 1916.*)

§ 173. **Official visits to counties.**—The tax commission shall cause an official visit to be made in every county in the state at least once in two years, and inquire into the methods of assessment and taxation, and ascertain whether the assessors faithfully discharge their duties and particularly as to their compliance with the provisions of this chapter requiring the assessment of all property not exempt from taxation at its full value. The members of the board of supervisors of the county and the assessors of the cities, towns and villages within the county shall meet at the place or places within the county designated by the commission. Supervisors in addition to the compensation provided by section twenty-three of the county law, and assessors, shall be entitled to receive compensation at the rate of four dollars per day for each calendar day actually and necessarily spent in attending a meeting within the county held for the purpose of conference with the state tax commission or a member of such commission and mileage at the rate of eight cents per mile by the most direct route from his residence, in going to and returning from the place within the county where such meeting is held. Such compensation and mileage shall be a county charge in reference to the town officials and a village charge for the village assessors. (*Amended by L. 1911, ch. 120, L. 1915, ch. 317, and L. 1916, ch. 323, § 57, in effect Apr. 26, 1916.*)

§ 173-a. **Reassessment.**—At any time within thirty days after the completion of the assessment-roll by the assessors of any tax district, if the commission shall have reason to believe from information furnished by any taxpayer or otherwise that such assessment-roll shows undervaluations, inequalities, omissions or irregularities, sufficient to make it inequitable as between owners of real property taxable within the tax district or as between the tax district and other tax districts in a county or in a city comprising more than one county, it may apply to any justice of the su-

preme court of the judicial district within which such tax district is wholly or partly located, for an order directed to the assessors of such tax district, requiring such assessors to show cause at a time and place specified therein, why such assessment-roll should not be corrected. Such order shall be returnable before the justice issuing it, on a day not later than ten days from the date of the issue thereof. If it shall appear upon the return day of such order that such assessment-roll shall not have been prepared and completed in accordance with the provisions of this chapter, such justice acting summarily may by order direct such assessors to correct such inequalities, irregularities, omissions and undervaluations, and in his discretion, may cancel such roll and direct that a new assessment-roll for such tax district be made by such assessors, and shall fix and determine the date on which such new assessment-roll shall be completed, the date on which application for review of the new assessment shall be heard, and the date on which the roll shall be filed and delivered to the supervisors or other lawful authority.

Notice of such hearing for review shall be given one week in advance in the same manner as the notice of the first completion of the assessment-roll so cancelled. After the determination of complaints the assessors shall attach a certificate to the new assessment-roll that such roll has been completed in conformity with the provisions of the order of the justice, and such roll shall be the assessment-roll of such tax district in place of the assessment-roll cancelled by order of such justice. If such new assessment-roll cannot be completed in time to take the place of the original assessment-roll in such district for the levy and collection of taxes for the current year, said taxes shall be levied and collected upon the basis of the original assessment-roll and when the new assessment-roll is completed the inequalities in the taxes levied on the basis of the original assessment-roll shall be remedied and compensated in the levy and collection of taxes in such district for the year next following the completion of the new assessment-roll by crediting the taxes levied in excess of what they would have been had the reassessment been made in time, or charging in addition the difference between the amounts levied on the basis of the original assessment-roll and the amounts which would have been levied on the basis of the new assessment-roll, as the case may be.

In cities the mayor or a borough president and in towns a supervisor and in villages the president or a trustee may apply to the tax commission on behalf of the tax district which he wholly or in part represents, for a hearing and determination of the question of inequalities in the assessment of property as between such tax district and other tax districts in the county or in a city where said city comprises more than one county. After such application a hearing shall be held and upon a determination that sufficient inequalities exist therefor, the commission shall apply to a justice of the supreme court as in this section provided, for the correction of the assessment-roll of the tax district, or tax districts complained of.

L. 1916, ch. 323.

State board of equalization.

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For the purposes of this section an incorporated village shall be deemed a tax district. (*Added by L. 1915, ch. 317, and amended by L. 1916, ch. 323, § 58, in effect Apr. 26, 1916.*)

§ 174. **State board of equalization; powers and duties.**—The commissioners of the land office and the members of the tax commission shall constitute the state board of equalization. The state board of equalization shall meet in the city of Albany on the first Tuesday in September in each year, for the purpose of examining and revising the valuations of real and personal property of the several counties as returned to the state tax commission, and shall in accordance with the rules of equalization set forth in section fifty of this chapter so far as applicable fix the aggregate amount of assessment for each county, upon which the comptroller shall compute the state tax. In so fixing such aggregate amount of assessment for a county the state board of equalization shall not include the shares of stock of banks or banking associations assessed pursuant to article two of this chapter. The board may increase or diminish the aggregate valuations of real property in any county by adding or deducting such sum as in its opinion may be just and necessary to produce a just relation between the valuations of real property in the state. But it shall, in no instance, reduce the aggregate valuations of all the counties below the aggregate valuations thereof as so returned. The comptroller shall immediately ascertain from this assessment, a copy of which shall be transmitted to him, the proportion of state tax each county shall pay, and mail a statement of the amount to the county clerk, and to the chairman and clerk of the board of supervisors of each county. (*Amended by L. 1915, ch. 317, and L. 1916, ch. 249, in effect Apr. 18, 1916, and L. 1916, ch. 323, § 59, in effect Apr. 26, 1916.*)

Note.—The section as amended by L. 1916, ch. 323 is here included.

The assessed valuation of bank stock as personal property may be considered by the state board of equalization. Atty. Genl. Opin., 5 State Dep. Rep. 471 (1915); but see amendment of 1916.

Mandamus.—Legality of determination of state board of equalization; peremptory writ of mandamus to compel revised statement assessments denied. Matter of City of New York (1916), 93 Misc. 645.

§ 175. **Appeals from equalization by board of supervisors.**—The mayor of a city in behalf of said city, a borough president in behalf of his borough, any supervisor in behalf of a city or town which he wholly or in part represents, may appeal to the tax commission, from any act or decision of the board of supervisors, in the equalization of assessments and the correction of the assessment-rolls. If such appeal is brought in behalf of a town, a majority of the town board of such town, if in behalf of a city, a majority of the common council or board of estimate of such city, shall first consent to and approve the bringing of such appeal. Such appeal shall be brought within ten days after the delivery of the assessment-roll to the collector by filing in the office of the county clerk a notice thereof,

with such consent endorsed thereon or annexed thereto, together with the affidavit of the mayor or supervisor so appealing, that in his opinion injustice has been done to such city or town by the act or decision from which the appeal is taken; and also within such time, by serving personally or by mail, a duplicate or copy of such notice, consent and affidavit on the chairman or clerk of the board of supervisors, and by mailing such a copy or duplicate to the tax commission. (*Amended by L. 1915, ch. 317, and L. 1916, ch. 323, § 60, in effect Apr. 26, 1916.*)

See generally *People ex rel. Town of Hempstead v. State Board of Tax Commissioners* (1915), 92 Misc. 616, 157 N. Y. Supp. 568.

§ 176-a. Commission's review of equalization by board of supervisors.—The tax commission shall have power on complaint to review the equalization fixed by the board of supervisors of any county or other lawfully constituted authority. Due notice of the hearing on such review shall be given by the commission to the clerk of the board of supervisors of the county, whose duty it shall be to transmit a copy of such notice to the mayor of cities in such county and to each supervisor of the county. In the city of New York such notice shall be given to the secretary of the board of taxes and assessments. (*Added by L. 1915, ch. 317, and L. 1916, ch. 323, § 61, in effect Apr. 26, 1916.*)

§ 177. Commission's determination on appeal or review.—On appeal by any town, city, or borough from the board of supervisors' or other lawful authority's equalization or on review thereof by the commission of its own motion or on complaint the commission shall review the equalization made by the board of supervisors of the county or other lawful authority and shall determine whether any, and if any, what deductions or additions ought to be made from or to the aggregate corrected value of the real and personal property of any tax district as made and to what tax district or districts in such county the amount of such deductions or additions, if any, shall be added or subtracted; and shall certify their determination, in writing, to such board of supervisors or other lawful authority and forward the same by mail within ten days thereafter to the clerk of the board, directed to him at his post-office address, and forward a copy thereof to the supervisor or borough president appealing, if any. Such determination shall have the same force and effect as an original equalization made by the board of supervisors or other lawful authority within the time prescribed by law and shall be carried into effect by such board or other lawful authority. In the city of New York for the purpose of equalization appeals, reassessment or reviews each borough shall be deemed a tax district. (*Amended by L. 1915, ch. 317, and L. 1916, ch. 323, § 62, in effect Apr. 26, 1916.*)

§ 177-a. Method of carrying out commission's equalization.—If any such equalization by the tax commission cannot be completed in time to take the place of the original equalization by the board of supervisors or other

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lawful authority, the commission shall determine the amount of state and county taxes paid or payable by any town, city or borough in the county under the original equalization, in excess of or less than that which such town, city or borough would have paid under the equalization as made by the commission. Any excess so determined shall be subtracted with interest, and any deficiency shall be added, with a proportionate part of such interest allowance, from or to the amount of county and state taxes charged in the next succeeding year to each such town, city or borough. (*Added by L. 1915, ch. 317, and amended by L. 1916, ch. 323, § 63, in effect Apr. 26, 1916.*)

§ 178. **Costs on appeal.**—The tax commission shall certify the reasonable expense on every appeal from an equalization by the county board of supervisors, or other lawful authority, not exceeding the sum of two thousand dollars for services of counsel and one thousand dollars for all other expenses, including the compensation and expense of the stenographer. If such appeal is not sustained, the costs and expenses thereof so certified shall be a charge upon the tax district or districts taking such appeal and shall be levied thereon by the board of supervisors. If the appeal is sustained, the amount of such costs and expenses so certified shall be levied by the board of supervisors upon, and collected from, the county in the assessment and collection of taxes for the current year, except the tax district or tax districts whose appeal is sustained. If there shall be appeals by more than one tax district in the county, some of which are sustained and some dismissed, the commission shall decide what portion of such costs and expenses shall be borne by any tax district whose appeal is dismissed. Where no hearing is had on an appeal the costs and expenses shall be in the discretion of the tax commission but in no event shall exceed the amounts previously set forth in this section. (*Amended by L. 1915, ch. 317, and L. 1916, ch. 323, § 64, in effect Apr. 26, 1916.*)

See generally *People ex rel. Town of Hempstead v. State Board of Tax Commissioners* (1915), 92 Misc. 616, 157 N. Y. Supp. 568.

§ 181. **License tax on foreign corporations.**

Failure to pay tax.—A foreign corporation may maintain a suit to enjoin the use of its trade name by another, although it has not procured a license under section 15 of the General Corporation Law or paid the tax required by section 181 of the Tax Law. *Hoewel Sandblast Machine Co. v. Hoevel* (1915), 167 App. Div. 548, 153 N. Y. Supp. 35.

§ 182. **Franchise tax on corporations.**—For the privilege of exercising its corporate franchises in this state every domestic corporation, joint stock company or association, and for the purpose of doing business in this state, every foreign corporation, joint stock company or association, shall pay to the state treasurer annually, in advance, an annual tax to be computed upon the basis of the amount of its capital stock, employed during the preceding year within this state, and upon each dollar of such amount. The

measure of the amount of capital stock employed in this state shall be such a portion of the issued capital stock as the gross assets employed in any business within this state bear to the gross assets wherever employed in business. For purposes of taxation, the capital of a corporation invested in the stock of another corporation shall be deemed to be assets located where the physical property represented by such stock is located. If the dividends upon the capital stock amount to six, or more than six per centum upon the par value of the capital stock, during any year ending with the thirty-first day of October, the tax shall be at the rate of one-quarter of a mill for each one per centum of dividends made or declared upon the par value of the capital stock during said year. If such dividend or dividends amount to less than six per centum on the par value of the capital stock, and

- (1) The assets do not exceed the liabilities, exclusive of capital stock, or
- (2) The average price at which such stock sold during said year did not equal or exceed its par value, or
- (3) If no dividend was declared,

Then each dollar of the amount of capital stock employed in this state, determined as hereinbefore provided, shall be taxed at the rate of three-fourths of one mill. If such dividend or dividends amount to less than six per centum on the par value of the capital stock, and

- (1) The assets exceed the liabilities, exclusive of capital stock, by an amount equal to or greater than the par value of the capital stock, or
- (2) The average price at which such stock sold during said year is equal to or greater than the par value,

Then the amount of capital stock, determined as hereinbefore provided to be employed in this state, shall be taxed at the rate of one and one-half mills on each dollar of the valuation of the capital stock employed in this state, but such valuation shall not be less than

- (1) The par value of such stock,
- (2) The difference between the assets and liabilities, exclusive of capital stock,
- (3) The average price at which such stock sold during said year.

If such corporation, joint stock company or association shall have more than one kind of capital stock, and upon one of such kinds of stock a dividend or dividends amounting to six or more than six per centum upon the par value thereon, has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-quarter of a mill for each one per centum of dividends made or declared upon the capital stock upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto a tax shall be charged upon the capital stock

- (1) Upon which no dividend was made or declared, or

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(2) Upon which the dividend or dividends made or declared did not amount to six per centum upon the par value,

At the rate as hereinbefore provided for the taxation of capital stock upon which no dividend was made or declared, or upon which the dividend or dividends made or declared did not amount to six per centum on the par value.

All corporations not taxable under the preceding paragraphs of this section shall be taxed in an amount not less than would be produced by an assessment of one and one-half mills on each one dollar of the actual value of its capital stock, determined to be employed in this state as hereinbefore provided, or one and one-half mills upon each dollar of such capital stock at the average price at which said stock sold during the said year. (*Amended by L. 1915, ch. 317, and L. 1916, ch. 333, in effect Apr. 27, 1916.*)

Lessor not liable for franchise tax.—A domestic railroad corporation, which has leased its railroad to a foreign railroad company, but has received no rent and transacted no business except to keep alive its corporate existence by the election of its officers, is not liable for a franchise tax for transacting business. *People ex rel. Lehigh and New York R. R. Co. v. Sohmer* (1916), 217 N. Y. 443, revg. 169 App. Div. 430, 154 N. Y. Supp. 1053.

Exemption from franchise tax of Interborough Rapid Transit Company.—See *Interborough Rapid Transit Co. v. Sohmer* (1915), 237 U. S. 276.

Declaration of stock dividend.—Where a domestic business corporation declared a stock dividend of one hundred per cent, thereby doubling its capital stock, such corporation is liable for a franchise tax, under section 182 of the Tax Law, assessed upon the par value of its stock, before it was increased by the stock dividend, at the rate of one-quarter of a mill for each per cent of dividend declared thereon, and is liable, also for a tax assessed upon the stock issued as a dividend at the rate of three-quarters of one mill upon the amount of such stock. *People ex rel. Empire State Dairy Co. v. Sohmer* (1916), 218 N. Y. 199.

§ 183. Certain corporations exempt from tax on capital stock.

The process of pasteurizing milk, by which impurities are removed therefrom and dangerous germs destroyed without injury to the milk as food, cannot within any controlling principle or important decision which has been applied to the definition of that term as used in the statute in question or any kindred enactments be held to be manufacturing, and hence a domestic corporation engaged in the business of collecting, pasteurizing and marketing milk is not exempt from the payment of such tax. *People ex rel. Empire State Dairy Co. v. Sohmer* (1916), 218 N. Y. 199.

§ 220. Taxable transfers.—A tax shall be and is hereby imposed upon the transfer of any tangible property within the state and of intangible property, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations in the following cases, subject to the exemptions and limitations hereinafter prescribed:

1. When the transfer is by will or by the intestate laws of this state of any intangible property, or of tangible property within the state, from any person dying seized or possessed thereof while a resident of the state.

2. When the transfer is by will or intestate law, of tangible property within the state or of any intangible property, if evidenced by or consisting of shares of stock, bonds, notes or other evidences of interest in any corporation, joint stock company or association wherever incorporated or organized, except a corporation, foreign or domestic, or joint stock company or association constituting, being or in the nature of a moneyed corporation, a railroad or transportation corporation, or a public service or manufacturing corporation as defined and classified by the laws of this state, and the property represented by such shares of stock, bonds, notes or other evidences of interest consists of real property which is located, wholly or partly, within the state of New York, or of an interest in any partnership business conducted, wholly or partly, within the state of New York, in such proportion as the value of the real property of such corporation, joint stock company or association, or as the value of the entire property of such partnership located in the state of New York bears to the value of the entire property of such corporation, joint stock company or association or partnership, and the decedent was a nonresident of the state at the time of his death; or when the transfer is by will or intestate law of capital invested in business in the state by a non-resident of the state doing business in the state either as principal or partner.

3. Whenever the property of a resident decedent, or the property of a non-resident decedent within this state, transferred by will is not specifically bequeathed or devised, such property shall, for the purposes of this article, be deemed to be transferred proportionately to and divided pro rata among all the general legatees and devisees named in said decedent's will, including all transfers under a residuary clause of such will.

4. When the transfer is of intangible property, or of tangible property within the state, made by a resident, or of tangible property within the state or of any intangible property, if evidenced by, or consisting of shares of stock, bonds, notes or other evidences of interest in any corporation, joint stock company or association wherever incorporated or organized, except a corporation, foreign or domestic, or joint stock company or association constituting, being or in the nature of a moneyed corporation, a railroad or transportation corporation, or a public service or manufacturing corporation as defined and classified by the laws of this state, and the property represented by such shares of stock, bonds, notes or other evidences of interest consists of real property which is located, wholly or partly, within the state of New York, or of an interest in any partnership business conducted, wholly or partly, within the state of New York, in such proportion as the value of the real property of such corporation, joint stock company or association, or as the value of the entire property of such partnership located in the state of New York bears to the value of the entire property of such corporation, joint stock company or association or partnership made by a non-resident or capital invested in business in the state by a non-resident of the state doing business in the state either as principal

or partner by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death.

5. When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer whether made before or after the passage of this chapter.

6. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this chapter, such appointment when made shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will.

7. Whenever property is held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositaries in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased tenant by the entirety, joint tenant or joint depositor and had been bequeathed to the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, by such deceased tenant by the entirety, joint tenant or joint depositor by will.

8. The tax imposed hereby shall be upon the clear market value of such property, at the rates hereinafter prescribed. (*Amended by L. 1910, ch. 706, L. 1911, ch. 732, L. 1915, ch. 664, and L. 1916, ch. 323, § 83, in effect Apr. 26, 1916.*)

The tax imposed by this section is upon the transfer by will of the property of which decedent died "seized or possessed." It is by the statute "due and payable at the time of the transfer," that is at the death of the decedent. It accrues at that time and the amount of the tax is not affected by an increase or decrease in the clear market value of the estate between the date of the decedent's death and its subsequent distribution among the beneficiaries or transferees under the will. *Matter of Penfold* (1915), 216 N. Y. 163, affg. 168 App. Div. 948, 153 N. Y. Supp. 1131.

A transfer tax upon the property of a decedent attaches immediately upon his death. In ascertaining the amount of the tax the aggregate of the value of all the items transferred is the basis of computation; the tax is not segregated and an aliquot part thereof collected out of each item, but it becomes payable and is a lien upon all the property transferred to any particular individual. *Smith v. Browning* (1916), 171 App. Div. 279, 157 N. Y. Supp. 71.

Distinction between residence and nonresidence; domicile; declarations by decedent.—While the Transfer Tax Law makes a distinction between residence and nonresidence it does not employ the term "domicile." Domicile and residence are sometimes synonyms and sometimes contradistinguished. When synonymous, rules regulating domicile are not irrelevant in a determination of a man's legal residence

for purposes of taxation. But residence is sometimes regarded as a looser term than domicile. On an issue of domicile or residence declarations of the deceased are competent proof of intention, but not all such declarations are of equal weight. Where a domicile of origin, or of choice, is once firmly established by evidence it is presumed to continue, and the burden is on those asserting a change. Declarations to be competent or of great weight should ordinarily be part of a relevant *res gestæ*. Apostrophes and declamations contained in a book published or written by decedent are of light weight as evidence of the author's intention in respect of his domicile. *Matter of Martin* (1916), 94 Misc. 81, 157 N. Y. Supp. 474.

A will, probated before the enactment of the statute imposing a transfer tax, created a trust estate and gave the beneficiary the power to dispose of the estate by her will and provided that in default of any will of the beneficiary the trustees should pay the estate to those who would receive it had the beneficiary died intestate and its owner. It was *held*, that the value of the shares of such children should be deducted from the value of the estate, and that the tax be fixed upon the remaining value. *Matter of Slosson* (1915), 216 N. Y. 79, revg. 168 App. Div. 891.

Property passing under exercise of power of appointment; refund of taxes; estate in remainder.—Upon the death of testator's widow the property passing by virtue of her exercise of a power of appointment by will given by his will contingent upon her remaining his widow is subject to a transfer tax as a part of her estate. Where it appears that the contingent power of appointment has been exercised, the surrogate has power to modify an order fixing a tax upon the property as a part of the estate of the donor, but he has no jurisdiction to direct the state comptroller to refund the difference between the amount of tax assessed by the original order and the amount assessed by the modified order. The remainder estate passing as it did under the power of appointment and not under the original will was not subject to a transfer tax. *Matter of Tillinghast* (1916), 94 Misc. 76, 157 N. Y. Supp. 378.

A transfer tax may be imposed upon property passing under a power of appointment exercised by a life tenant. The fact that such property was taxed as part of the estate of the donor of the power cannot prevent its taxation under said section of the Tax Law; the remedy of those interested in preventing double taxation is by a modification of the order entered in the estate of the donor of the power. *Matter of Tillinghast* (1916), 94 Misc. 50, 157 N. Y. Supp. 382.

When transfers under trust instrument should be combined with legacies for purpose of assessment of transfer tax.—An instrument transferring shares of stock to a trustee which reserved to the donor the income from the stock during his lifetime; the right to direct how the trustee should vote thereon; the power to cause the trustee to sell the stock in such manner and at such price as the donor might direct; the right to substitute a different trustee at will; and the absolute right of revocation at any time during the lifetime of the donor, is testamentary in character and must be regarded as speaking from the time when it became effective by reason of the death of the party who executed it. Where the beneficiaries under such trust instrument are the same persons who are legatees under the donor's will, the transfers under the trust instrument should be combined with the legacies given by the will for the purpose of assessing the transfer tax. *Matter of Dana Co.* (1915), 215 N. Y. 461, revg. 164 App. Div. 957, 149 N. Y. Supp. 1119.

Where transfers are distinct in character, one being a gift *inter vivos*, taxable when made, and the other a legacy taxable only upon the death of the testator, there appears to be no warrant in law for adding them together and considering them as one transfer. *Matter of Hodges* (1915), 215 N. Y. 447, distinguishing 215 N. Y. 461.

Good will, as an asset of decedent's estate. See *Matter of Gumbruner* (1915), 92 Misc. 104, 155 N. Y. Supp. 188.

Deposits in name of husband and wife; right of survivorship not taxable.—Where a husband makes deposits in the name of himself and wife and also takes securities in their joint names it must be presumed, in the absence of evidence to the contrary, that a right of survivorship was created when the moneys were deposited and the securities taken, which upon the death of the husband is not taxable. *Matter of Thompson* (1915), 167 App. Div. 356, 153 N. Y. Supp. 164.

Deposit of money in savings bank in trust; when not subject to transfer tax.—Where the decedent deposited certain of her own money in a savings bank in her own name in trust for a named niece, and at a time not shown delivered to her the bank-book which remained in her possession continuously until decedent's death, and it appears that there were neither withdrawals nor additions to the deposit, the finding must be that the deposit was of the character of an irrevocable trust and therefore not subject to a transfer tax. *Matter of Rudolph* (1915), 92 Misc. 347, 156 N. Y. Supp. 825.

Tenants by entirety; interest of survivor taxable.—Where a husband conveyed real property to himself and his wife "as tenants by the entirety," upon the death of the husband his one-half interest became subject to a transfer tax. *Matter of Klatzl* (1915), 216 N. Y. 83, revg. 166 App. Div. 921, 151 N. Y. Supp. 1125.

Gift in contemplation of death.—Where a decedent seventy-nine years of age and in failing health two days before he was taken ill with pneumonia, from which he subsequently died, transferred several parcels of real estate to himself and wife as joint tenants, stating that it was his intention that "his wife would take his property when he died," such transfers constitute a gift in contemplation of death within the meaning of the Tax Law and are taxable. *Matter of Thompson* (1915), 167 App. Div. 356, 153 N. Y. Supp. 164.

Where property is transferred in contemplation of death it should be treated as a class by itself and the exemption allowed by the Tax Law is to be only from the aggregate value of all of the property thus transferred and in addition to the exemption allowed where property also passes under a will. *Matter of Thompson* (1915), 167 App. Div. 356, 153 N. Y. Supp. 164.

When property in foreign state not subject to transfer tax in this state.—Where decedent at the time of his death held the legal title to certain real estate situated in the state of New Jersey neither it nor the money unpaid upon contracts for the sale thereof is subject to a transfer tax in this state. *Matter of Wolcott* (1916), 94 Misc. 73, 157 N. Y. Supp. 268.

§ 221. **Exceptions and limitations.**—Any property devised or bequeathed for religious ceremonies, observances or commemorative services of or for the deceased donor, or to any person who is a bishop or to any religious, educational, charitable, missionary, benevolent, hospital or infirmary corporation, wherever incorporated, including corporations organized exclusively for bible or tract purposes and corporations organized for the enforcement of laws relating to children or animals, shall be exempted from and not subject to the provisions of this article. There shall also be exempted from and not subject to the provisions of this article personal property other than money or securities bequeathed to a corporation or associations wherever incorporated or located, organized exclusively for the moral or mental improvement of men or women or for scientific, literary, library, patriotic, cemetery or historical purposes or for two or more of such purposes and used exclusively for carrying out one or more of such

purposes. But no such corporation or association shall be entitled to such exemption if any officer, member or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purpose be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees or if it be not in good faith organized or conducted exclusively for one or more of such purposes. There shall also be exempted from and not subject to the provisions of this article all property or any beneficial interest therein so transferred to any father, mother, husband, wife, widow or child of the decedent, grantor, donor or vendor if the amount of the transfers to such father, mother, husband, wife, widow or child is the sum of five thousand dollars or less; but if the amount so transferred to any father, mother, husband, wife, widow or child is over five thousand dollars, the excess above these amounts, respectively, shall be taxable at the rates set forth in the next section. (*Amended by L. 1910, chs. 600, 706, L. 1911, ch. 732, L. 1912, ch. 206, L. 1913, chs. 356, 795, and L. 1916, ch. 548, in effect May 15, 1916.*)

When Surrogate's Court without jurisdiction to declare estate of decedent exempt under Transfer Tax Law, see *Matter of Drake* (1916), 94 Misc. 70, 157 N. Y. Supp. 270.

Charitable and benevolent corporation.—Provisions of the charter of the Hebrew Charities Building examined, and *held*, that said corporation is both "charitable" and "benevolent" within the meaning of this section. *Matter of Loeb* (1915), 167 App. Div. 588, 152 N. Y. Supp. 879.

A devise and bequest of property to a domestic incorporated village in trust for the benefit perpetually of the worthy indigent women of the town in which the village is located comes under both the spirit and the letter of this section. *Matter of Albright* (1916), 93 Misc. 388, 156 N. Y. Supp. 821.

A bequest to the "Vivisection Investigation League," a corporation organized for the investigation of vivisection both upon animals and upon human beings, and for carrying on any work for the purpose of rousing public sentiment against the evils of vivisection, is subject to a transfer tax. *Matter of Howard* (1916), 94 Misc. 560, 157 N. Y. Supp. 1114.

A transfer of bonds and mortgages on real estate in this state by virtue of a power of appointment exercised by the decedent is to be regarded as his property for the purposes of the Transfer Tax Law and is subject to taxation under the provisions of that law in force at the date of his death. *Matter of Warden* (1916), 94 Misc. 563, 157 N. Y. Supp. 111.

§ 221-a. Rates of tax.—1. Upon all transfers taxable under this article of property or any beneficial interest therein in excess of the value of five thousand dollars, to any father, mother, husband, wife, or child of the decedent, grantor, donor or vendor, or to any child adopted as such in conformity with the laws of this state, of the decedent, grantor, donor or vendor, or upon all transfers taxable under this article of property or any beneficial interest therein in excess of the value of five hundred dollars to

any lineal descendant of the decedent, grantor, donor or vendor, born in lawful wedlock, the tax on such transfers shall be at the rate of

One per centum on any amount up to and including the sum of twenty-five thousand dollars;

Two per centum on the next seventy-five thousand dollars or any part thereof;

Three per centum on the next one hundred thousand dollars or any part thereof;

Four per centum on the amount representing the balance of each individual transfer.

2. Upon all transfers taxable under this article of property or any beneficial interest therein in excess of the value of five hundred dollars or more, to a brother, sister, wife or widow of a son, or the husband of a daughter of the decedent, grantor, donor or vendor, or to any child to whom any such decedent, grantor, donor or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, the tax on such transfers shall be at the rate of

Two per centum on any amount up to and including the sum of twenty-five thousand dollars;

Three per centum on the next seventy-five thousand dollars or any part thereof;

Four per centum on the next one hundred thousand dollars or any part thereof;

Five per centum on the amount representing the balance of each individual transfer.

3. Upon all transfers taxable under this article of property or any beneficial interest therein of an amount in excess of the value of five hundred dollars, to any person or corporation other than those enumerated in paragraphs one and two of this section the tax on such transfers shall be at the rate of

Five per centum on any amount up to and including the sum of twenty-five thousand dollars;

Six per centum on the next seventy-five thousand dollars or any part thereof;

Seven per centum on the next one hundred thousand dollars or any part thereof;

Eight per centum on the amount representing the balance of each individual transfer. (*Added by L. 1911, ch. 732, and amended by L. 1915, ch. 664, and L. 1916, ch. 548, in effect May 15, 1916.*)

Application.—Where a testamentary trust of realty provides that the rents and profits shall be paid to the grandson of the testatrix until he attain the age of twenty-one years, at which time the corpus is devised to him, his heirs and assigns forever, with a proviso that, should the grandson die before attaining the age of

twenty-one years leaving issue him surviving, then the lands shall go to the issue share and share alike, a transfer tax of only one per cent should be imposed where the devisee is the decedent's nearest next of kin, although there is a contingent intestacy in case he dies before attaining the age of twenty-one years leaving no issue him surviving. This, because, on the death of the decedent, the lands vested immediately in the devisee subject only to be divested by the happening of the contingency aforesaid, and because, should said contingency happen, the effect would be to create a new title in the devisee as heir at law and nearest of kin which estate would revert back to and vest at the date of the decedent's death. *Matter of Zitzlperger* (1915), 170 App. Div. 615, 156 N. Y. Supp. 571.

A gift made in contemplation of death is a transfer taxable when made under this section, and is, therefore, entitled to the exemption prescribed by said section. *Matter of Hodges* (1915), 215 N. Y. 447.

Parent of legatee; rate of one per cent.—Where a transfer tax appraiser reported that a legatee under the will was a grandniece of decedent and that the legacy should be taxed at the rate of five per cent, but the evidence shows that decedent for more than ten years immediately prior to her death stood in the mutually acknowledged relation of parent to the legatee within the meaning of section 221a of the Tax Law, the legacy to her is taxable at the rate of one per cent. *Matter of Kirtland* (1916), 94 Misc. 58, 157 N. Y. Supp. 378.

§ 222. Accrual and payment of tax.

See generally *Matter of Valentine* (1915), 91 Misc. 203, 210, 155 N. Y. Supp. 53.

§ 229. Appointment of appraisers, stenographers and clerks.—The state comptroller shall appoint and may at pleasure remove not to exceed six persons in the county of New York, four persons in the counties of Kings and Bronx, and one person in the counties of Albany, Dutchess, Erie, Monroe, Nassau, Niagara, Oneida, Onondaga, Orange, Queens, Rensselaer, Richmond, Suffolk, Chautauqua and Westchester, to act as appraisers therein. The state comptroller, from time to time and whenever in his opinion it is necessary, may also appoint and at pleasure remove not to exceed two additional persons to act as transfer tax appraisers in the county of New York, to whom shall be referred the appraisal of delinquent estates pending before the transfer tax appraisers in New York county, where more than eighteen months have elapsed since the death of such decedents, respectively, and also to act as appraiser of other estates whenever it shall appear to the comptroller that the services of such additional appraiser is necessary. The appraisers so appointed shall receive an annual salary to be fixed by the state comptroller, together with their actual and necessary traveling expenses and witness fees, as hereinafter provided, payable monthly by the state comptroller out of any funds in his hands or custody on account of transfer tax. The salaries of each of the appraisers so appointed shall not exceed the following amounts: In New York county, four thousand dollars; in Kings and Bronx counties, four thousand dollars; in Albany, Erie, Queens and Westchester counties, three thousand dollars; in Onondaga county, two thousand five hundred dollars; in Nassau, Orange and Rensselaer counties, two thousand dollars; in Monroe and Oneida counties, one thousand five hundred dollars; in Chautauqua county,

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twelve hundred dollars; in Dutchess, Niagara, Richmond and Suffolk counties, one thousand dollars. Each of the said appraisers shall file with the state comptroller his oath of office and his official bond in the penal sum of not less than one thousand dollars, in the discretion of the state comptroller, conditioned for the faithful performance of his duties as such appraiser, which bond shall be approved by the attorney-general and the state comptroller. The state comptroller shall retain out of any funds in his hands on account of said tax the following amounts: First, a sum sufficient to provide the appraisers of New York county with one managing clerk, at a salary not to exceed four thousand dollars a year, whose duties shall be prescribed by the state comptroller, nine stenographers, three clerks, one examiner of values, and one assistant examiner of values, whose salaries shall not exceed two thousand dollars a year each, and one junior clerk, whose salary shall not exceed six hundred dollars a year; the appraisers of Kings and Bronx counties, with four stenographers, whose salaries shall not exceed two thousand dollars a year each, one clerk, whose salary shall not exceed one thousand five hundred dollars a year, one page whose salary shall not exceed four hundred and eighty dollars a year, and the appraiser of Erie county with one clerk, whose salary shall not exceed fifteen hundred dollars a year, and the appraiser of Westchester county with one clerk, whose salary shall not exceed the sum of twelve hundred dollars a year, and the appraiser of Queens county with one clerk, whose salary shall not exceed the sum of fifteen hundred dollars a year, and the appraiser of Oneida county with one stenographer, whose salary shall not exceed the sum of nine hundred dollars a year, such employees to be appointed by the state comptroller. The state comptroller shall also retain out of any funds in his hands on account of said tax a sum sufficient to provide each of the additional transfer tax appraisers in New York county, whenever appointed as hereinbefore provided, with a stenographer, whose salary shall not exceed the rate of two thousand dollars a year each, such employees to be appointed by the state comptroller. Second, a sum to be used in defraying the expenses for office rent, stationery, postage, process serving and other similar expenses necessarily incurred in the appraisal of estates, not exceeding fifteen thousand dollars a year in New York county, five thousand dollars a year in Kings and Bronx counties and one thousand dollars a year in Queens county. (*Amended by L. 1909, ch. 283, L. 1910, ch. 706, L. 1911, ch. 803, L. 1912, ch. 214, L. 1913, ch. 366, L. 1915, ch. 383, and L. 1916, chs. 80, 549, in effect May 15, 1916.*)

§ 230. **Proceedings by appraiser.**—In each county in which the office of appraiser is not salaried the county treasurer shall act as appraiser. The surrogate, either upon his own motion, or upon the application of any interested person, including the state comptroller, shall by order direct the person or one of the persons appointed pursuant to section two hundred and twenty-nine of this article in counties in which the office of appraiser

is salaried, and in other counties, the county treasurer, to fix the fair market value of property of persons whose estates shall be subject to the payment of any tax imposed by this article.

Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state comptroller, and to such persons as the surrogate may by order direct, of the time and place when he will appraise such property. He shall at such time and place appraise the same at its fair market value as herein prescribed; and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said surrogate, together with the depositions of the witnesses examined, and such other facts in relation thereto and to said matter as the surrogate may order or require. Every appraiser, except in the counties in which the office of appraiser is salaried, for which provision is hereinbefore made, shall be paid by the state comptroller and after the audit of said state comptroller, his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, payment to be made out of funds in the hands of the county treasurer of the proper county on account of the tax imposed under the provisions of this article.

The value of every future or limited estate, income, interest or annuity for any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be five per centum per annum.

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section two hundred and twenty-five of this article.

Where any property shall, after the passage of this chapter, be transferred subject to any charge, estate or interest, determinable by the death

of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this article in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interest is derived.

When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred, and the surrogate shall enter a temporary order determining the amount of said tax in accordance with this provision; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this article, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article; and the executor or trustee of each estate, or the legal representative having charge of the trust fund, shall immediately upon the happening of said contingencies or conditions apply to the surrogate of the proper county, upon a verified petition setting forth all the facts, and giving at least ten days' notice by mail to all interested persons or corporations, for an order modifying the temporary taxing order of said surrogate so as to provide for the final assessment and determination of the tax in accordance with the ultimate transfer or devolution of said property. Such return of overpayment shall be made in the manner provided by section two hundred and twenty-five of this article.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

The report of the appraiser shall be made in duplicate, one of which du-

plicates shall be filed in the office of the surrogate and the other in the office of the state comptroller. (*Amended by L. 1911, ch. 800, and L. 1916, ch. 550, in effect May 15, 1916.*)

The rules of valuation for taxation under sections 220, 221, 221-a and 230 may be generally stated as follows: (1) When the fair market value, at the date of the transferor's death, of the property which will ultimately go to the remaindermen is ascertained to any extent by any known method of computation, the tax is imposed under section 230 *at the highest rate*, and the provisions of section 222 do not apply to a case thus presented. (2) The value of the interest of the legatee presently entitled to receive the money must be *estimated for taxation without deduction on account of any contingency* which might defeat it, although the present interest may be exempt from taxation, no exception to the rule for that reason being stated in the statute. (3) When the transfer or possible reverter to the heirs which defeats or eliminates the possession or right of possession of those presently entitled thereto is subject to a contingency so remote that it cannot be measured by lives or years or any definite rule, its fair market value cannot be ascertained. It will, therefore, be ascertained and the tax thereon will "accrue and become payable only when the persons beneficially entitled thereto shall come into actual possession and enjoyment thereof." *Matter of Terry* (1916), 218 N. Y. 218.

Request during life of charitable corporation.—Testatrix bequeathed a legacy to a foreign charitable corporation "to be retained by it so long and only so long as the said corporation shall continue to exist under its present name and maintain under that name a home for destitute aged men and women . . . the income derived therefrom to be used for the purposes of the said Home during such period," and if and when the corporation should cease to do this then the principal of the fund should revert to the testatrix's heirs at law. *Held*, that the legacy should be valued as if absolute (except as to a life estate therein) and exempted, unaffected by the contingency upon which the legacies would revert to the heirs, and the valuation and taxation of the possibility of reverter to the heirs must be postponed until they come into possession thereunder. *Matter of Terry* (1916), 218 N. Y. 218.

Separate exemptions.—Where an estate in the remainder of testator's real estate is devised to his sister and two nieces each of the devisees is entitled to a separate exemption in a proceeding to assess the transfer tax, and each of said interests is of equal value in assessing the tax. *Matter of Sullivan* (1916), 94 Misc. 529.

Proceeding to fix cash value of shares of stock; when arbitrary deduction of amount claimed for depreciation in value of stock cannot be allowed.—In a proceeding to fix the cash value of shares of stock of a corporation, property of the decedent, the transfer of which is subject to a tax under the Transfer Tax Law, it appeared that the president and the decedent, the vice-president and treasurer of the corporation, who owned the bulk of the stock of the corporation, failed to draw salaries commensurate with the services rendered by them, and permitted the difference between what they earned and what they received to accumulate as profits. In appraising the value of the good-will in fixing the value of the shares of stock, the appraiser treated this difference as profit. It was *held*, that a fair deduction from these apparent profits of an amount as a salary for services rendered is justified in arriving at the value of the good-will of the business and should have been allowed, and the report should be remitted to the appraiser for correction in this respect. *Matter of Roos* (1915), 90 Misc. 521, 154 N. Y. Supp. 939.

In arriving at the value of an unlisted stock for transfer tax purposes, direct evidence of sales at or about the time of death will outweigh an unverified report of an investors' agency based upon offers claimed to have been made by various

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unnamed brokers, and upon quotations in a financial publication, nothing being shown as to the weight to be given such publication. *Matter of Newman* (1915), 91 Misc. 200, 154 N. Y. Supp. 1107. Where it is conceded that the affidavit of the administrator in a transfer tax proceeding inadvertently misstated the market value of certain stock belonging to the estate, and that following the report of the appraiser based on such statement the tax was assessed as if the stock was of its fair market value instead of its true value, the error may be corrected even after the lapse of two years from the making of the order assessing the tax. *Matter of Boyle* (1915), 92 Misc. 143, 156 N. Y. Supp. 173. Valuation of shares of stock, evidence, see *Matter of McMullen* (1915), 92 Misc. 637, 157 N. Y. Supp. 655.

Testamentary provision that corpus of trust estate shall be paid to beneficiary if he attains certain age; assessment of contingent estate in expectancy.—Where a testamentary trust provides that the trustee shall pay over to the beneficiaries one-third of the corpus as they respectively attain the ages of twenty-one, twenty-five and thirty years, the net income in the meantime to be paid to the beneficiaries, with contingent remainders to the issue of such beneficiaries as may die, or to the survivors if a beneficiary die without issue, and at the original appraisal of the transfer tax the value of the temporary life estate was fixed at a certain sum and the value of the remainder was fixed at another stated sum, but the actual taxation of the remainders was suspended on account of the contingencies mentioned in the will, the remainders, when they become payable upon the beneficiaries arriving at the ages aforesaid, should be assessed at their full undiminished value. Such appraisal of the remainder is authorized by this section. The fixing of the value of the remainders in the original appraisal was not a determination and may be disregarded. Said section relates to cases where a life tenant is also the remainderman as well as to cases where they are different persons. *Matter of Seligmann* (1915), 170 App. Div. 837, 156 N. Y. Supp. 648.

Assessment of remainder.—Decedent having directed that the income from his residuary estate be paid to his widow and daughter during their respective lives and upon the death of the survivor that the principal be divided among the surviving issue of the daughter *per stirpes* and in the event of her death without leaving issue such remainder to be divided into sixty equal parts and paid to the various legatees mentioned in the will, the remainder should be divided into sixty parts and each legacy presently taxed as if it were bequeathed to an individual of the five per cent. class. *Matter of Gumbiner* (1915), 92 Misc. 104, 155 N. Y. Supp. 188.

Duty of legatee claiming exemption from transfer tax to appear before appraiser and produce evidence as to exemption.—It is the duty of a legatee corporation claiming exemption from a transfer tax to appear before the appraiser, and the burden is upon it to produce evidence to show that it is entitled to the exemption. Where it fails to appear, after having been served with notice of the hearing, the appraiser has jurisdiction of the proceeding, and may properly determine the tax payable upon the legacy. The petition of a corporation to a Surrogate's Court for an order modifying a prior order by striking therefrom a transfer tax assessment made against it, which fails to allege fraud, newly-discovered evidence or clerical error, but bases its claim for relief upon the ground that it is exempt by law from a transfer tax, and that through an oversight in not bringing the matter to the attention of its attorneys no appearance was entered or affidavit of exemption filed on its behalf on the appraisal of the estate, is addressed to the judicial discretion of the surrogate, and his determination should not be disturbed on appeal. *Matter of Townsend* (1915), 215 N. Y. 442, revg. 153 App. Div. 85, 138 N. Y. Supp. 191.

Deductions; tax imposed in other states.—The transfer tax imposed upon portions of the estate of a decedent by the courts of other states in enforcing the

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statutes of such other states should not be allowed as deductions from the clear market value of the estate of such decedent under the Transfer Tax Laws of this state. *Matter of Penfold* (1915), 216 N. Y. 171, affg. 168 App. Div. 948, 153 N. Y. Supp. 1131.

The tax appraiser should have deducted from the assets of decedent within the state of New York the expenses of administration and commissions allowed by the laws of this state and also the proportion of the debts due to non-residents and administration expenses incurred in the state of decedent's domicile which the net New York assets bore to the entire assets of the estate. *Matter of Kirtland* (1916), 94 Misc. 58, 157 N. Y. Supp. 378.

Evidence.—A proceeding before an appraiser designated under the Transfer Tax Law is an inquisition rather than a trial at law, and common law rules of evidence cannot in strictness apply to such an inquisition which requires only that substantial justice be done. *Matter of Martin* (1916), 94 Misc. 81, 157 N. Y. Supp. 474.

§ 231. **Determination of surrogate.**—From such report of appraisal and other proof relating to any such estate before the surrogate, the surrogate shall forthwith, as of course, determine the cash value of all estates and the amount of tax to which the same are liable; or the surrogate may so determine the cash value of all such estates and the amount of tax to which the same are liable, without appointing an appraiser.

The superintendent of insurance shall, on the application of any surrogate, determine the value of any such future or contingent estates, income or interest therein limited for the life or lives of persons in being, upon the facts contained in any such appraiser's report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct.

The surrogate shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this article, and of the tax to which it is liable, to all persons known to be interested therein, and shall immediately forward a copy of such taxing order to the state comptroller. The surrogate shall also forward to the state comptroller copies of all orders entered by him in relation to or affecting in any way the transfer on any estate, including orders of exemption.

If, however, it appear at any stage of the proceedings that any of such persons known to be interested in the estate is an infant or an incompetent, the surrogate may, if the interest of such infant or incompetent is presently involved and is adverse to that of any of the other persons interested therein, appoint a special guardian of such infant; but nothing in this provision shall affect the right of an infant over fourteen years of age or of any one on behalf of an infant under fourteen years of age to nominate and apply for the appointment of a special guardian for such infant at any stage of the proceedings. (*Amended by L. 1916, ch. 550, in effect May 15, 1916.*)

§ 232. Appeal and other proceedings.

The state comptroller has an absolute right to appeal under this section from a *pro forma* order fixing a transfer tax and the surrogate must entertain the appeal

L. 1916, ch. 582.

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and determine the questions presented by it irrespective of the motives which prompted the taking of the appeal or the effect of his decision upon the interest of the state of New York. *Matter of Mills* (1916), 93 Misc. 413, 157 N. Y. Supp. 138.

A notice of appeal which states "that the order entered fixes and assesses an inadequate and insufficient tax on the transfers of the property of said decedent" is a sufficient compliance with the provision of the Transfer Tax Law which requires that a notice of appeal "shall state the grounds upon which the appeal is taken." *Matter of Murray* (1915), 92 Misc. 100, 155 N. Y. Supp. 185.

§ 234. Surrogate's assistants in New York, Kings and other counties.—

The state comptroller may, upon the recommendation of the surrogate, appoint, and may at pleasure remove, assistants and clerks in the surrogate's offices of the following counties, at annual salaries to be fixed by him not to exceed the amounts hereinafter specified:

1. In New York county, a transfer tax assistant, five thousand dollars; a transfer tax clerk, two thousand and four hundred dollars; an assistant clerk, eighteen hundred dollars; a recording clerk, thirteen hundred dollars; a stenographer, twelve hundred dollars; and shall be entitled to expend not more than seven hundred and fifty dollars a year in such office for expenses necessarily incurred in the assessment and collection of taxes under this article.

2. In Kings county, a transfer tax assistant, four thousand dollars; a deputy transfer tax assistant, three thousand dollars; three transfer tax clerks, one at a salary of two thousand dollars, one at a salary of fifteen hundred dollars and one at a salary of one thousand dollars; and shall be entitled to expend not more than five hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article. The assistant clerk now in office shall continue in office as transfer tax clerk at the salary of fifteen* hundred dollars. (*Subd. amended by L. 1916, ch. 582, in effect May 17, 1916.*)

3. In Erie county, a transfer tax clerk, eighteen hundred dollars.

4. In Westchester county, a transfer tax assistant, two thousand five hundred dollars.

5. In Albany county, a transfer tax clerk, fifteen hundred dollars.

6. In Queens county, a transfer tax clerk, fifteen hundred dollars.

7. In Onondaga county, a transfer tax clerk, twelve hundred dollars.

8. In Monroe county, two transfer tax clerks, one thousand dollars each; and shall be entitled to expend not more than two hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article.

9. In Dutchess county, a transfer tax clerk, nine hundred dollars.

10. In Oneida county, not more than two transfer tax clerks, twelve hundred dollars in the aggregate.

11. In Suffolk county, a transfer tax clerk, one thousand dollars.

* So in original.

12. In Ulster county, a transfer tax clerk, seven hundred and twenty dollars.

13. In Richmond county, a transfer tax clerk, one thousand dollars.

14. In Nassau county, a transfer tax clerk, twelve hundred dollars.

15. In Bronx county, a transfer tax assistant, two thousand dollars.

Such salaries and expenses shall be paid monthly by the state comptroller, upon proper vouchers, out of any funds in his hands on account of taxes collected under this article. (*Amended by L. 1910, ch. 70, L. 1911, chs. 160, 681, 744, L. 1912, ch. 45, L. 1913, ch. 429, L. 1916, ch. 562, in effect May 15, 1916, subd. 2, amended by L. 1916, ch. 582, in effect May 17, 1916.*)

§ 243. **Definitions.**—The words “estate” and “property,” as used in this article, shall be taken to mean the property or interest therein passing or transferred to individuals or corporate legatees, devisees, heirs, next of kin, grantees, donees or vendees, and not as the property or interest therein of the decedent, grantor, donor or vendor and shall include all property or interest therein, whether situated within or without the state. The words “tangible property” as used in this article shall be taken to mean corporeal property such as real estate and goods, wares and merchandise, and shall not be taken to mean money, deposits in bank, shares of stock, bonds, notes, credits or evidences of an interest in property and evidences of debt. The words “intangible property” as used in this article shall be taken to mean incorporeal property, including money, deposits in bank, shares of stock, bonds, notes, credits, evidences of an interest in property and evidences of debt. The word “transfer,” as used in this article, shall be taken to include the passing of property or any interest therein in the possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein prescribed. The words “county treasurer” and “district attorney,” as used in this article, shall be taken to mean the treasurer or the district attorney of the county of the surrogate having jurisdiction as provided in section two hundred and twenty-eight of this article. The words “the intestate laws of this state,” as used in this article, shall be taken to refer to all transfers of property, or any beneficial interest therein, effected by the statute of descent and distribution and the transfer of any property, or any beneficial interest therein, effected by operation of law upon the death of a person omitting to make a valid disposition thereof, including a husband’s right as tenant by the curtesy or the right of a husband to succeed to the personal property of his wife who dies intestate leaving no descendants her surviving.

For any and all purposes of this article and for the just imposition of the transfer tax, every person shall be deemed to have died a resident, and not a nonresident, of the state of New York, if and when such person shall have dwelt or shall have lodged in this state during and for the greater part

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of any period of twelve consecutive months in the twenty-four months next preceding his or her death; and also if and when by formal written instrument executed within one year prior to his or her death or by last will he or she shall have declared himself or herself to be a resident or a citizen of this state, notwithstanding that from time to time during such twenty-four months such person may have sojourned outside of this state and whether or not such person may or may not have voted or have been entitled to vote or have been assessed for taxes in this state; and also if and when such person shall have been a citizen of New York sojourning outside of this state. The burden of proof in a transfer tax proceeding shall be upon those claiming exemption by reason of the alleged nonresidence of the deceased. The wife of any person who would be deemed a resident under this section shall also be deemed a resident and her estate subject to the payment of a transfer tax as herein provided, unless said wife has a domicile separate from him. (*Amended by L. 1910, ch. 706, L. 1911, ch. 732, and L. 1916, ch. 551, in effect May 15, 1916.*)

§ 250. **Definitions.**—The term “real property” as used in this article, in addition to the definition thereof contained in section two of this chapter, includes everything a conveyance or mortgage of which can be recorded as a conveyance or mortgage of real property under the laws of the state. The term “mortgage” as used in this article includes every mortgage or deed of trust which imposes a lien on or affects the title to real property, notwithstanding that such property may form a part of the security for the debt or debts secured thereby. Executory contracts for the sale of real property under which the vendee has or is entitled to possession shall be deemed to be mortgages for the purposes of this article and shall be taxable at the amount unpaid on such contracts. A contract or agreement by which the indebtedness secured by any mortgage is increased or added to, shall be deemed a mortgage of real property for the purpose of this article, and shall be taxable as such upon the amount of such increase or addition. (*Amended by L. 1916, ch. 323, § 65, in effect Apr. 26, 1916.*)

A lease of real property for a term of three years or more constitutes “tangible” property. Atty. Genl. Rept. (1915), 4 State Dep. Rep. 524.

§ 251. **Exemption from local taxation.**—All mortgages of real property situated within the state which are taxed by this article and the debts and the obligations which they secure, together with the paper writings evidencing the same, shall be exempt from other taxation by the state, counties, cities, towns, villages, school districts and other local subdivisions of the state, except that such mortgage shall not be exempt from the taxes imposed by sections twenty-four, one hundred and eighty-seven, one hundred and eighty-eight, one hundred and eighty-nine and article ten of this chapter. (*Amended by L. 1916, ch. 323, § 66, in effect Apr. 26, 1916.*)

§ 253. **Recording tax.**—A tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of the execution thereof or at any time thereafter by a mortgage on real property situated within the state recorded on or after the first day of July, nineteen hundred and six, is hereby imposed on each such mortgage, and shall be collected and paid as provided in this article. If the principal debt or obligation which is or by any contingency may be secured by such mortgage recorded on or after the first day of July, nineteen hundred and seven, is less than one hundred dollars, a tax of fifty cents is hereby imposed on such mortgage, and shall be collected and paid as provided in this article. (*Amended by L. 1916, ch. 323, § 67, in effect Apr. 26, 1916.*)

Mortgages refunding prior mortgages and wiping them out of existence, are not entitled to any exemption from the recording tax imposed by this section, as they are not additional or supplemental mortgages within the meaning of section 255. Atty. Genl. Opin., 6 State Dep. Rep. 445 (1915).

§ 255. **Supplemental mortgages.**—If subsequent to the recording of a mortgage on which all taxes, if any, accrued under this article have been paid, a supplemental instrument or mortgage is recorded for the purpose of correcting or perfecting any recorded mortgage, or pursuant to some provision or covenant therein, or an additional mortgage is recorded imposing the lien thereof upon property not originally covered by or not described in such recorded primary mortgage for the purpose of securing the principal indebtedness which is or under any contingency may be secured by such recorded primary mortgage, such additional instrument or mortgage shall not be subject to taxation under this article, unless it creates or secures a new or further indebtedness or obligation other than the principal indebtedness or obligation secured by or which under any contingency may be secured by the recorded primary mortgage, in which case, a tax is imposed as provided by section two hundred and fifty-three of this chapter on such new or further indebtedness or obligation, and shall be paid to the proper recording officer at the time such instrument or additional mortgage is recorded. If at the time of recording such instrument, or additional mortgage any exemption is claimed under this section, there shall be filed with the recording officer and preserved in his office a statement under oath of the facts on which such claim for exemption is based. The determination of the recording officer upon the question of exemption shall be reviewable by the tax commission. (*Amended by L. 1916, ch. 323, § 68, in effect Apr. 26, 1916.*)

§ 256. **Mortgages for indefinite amounts or for contract obligations.**—If the principal indebtedness secured or which by any contingency may be secured by a mortgage is not determinable from the terms of the mortgage, or if a mortgage is given to secure the performance by the mortgagor or any other person of a contract obligation other than the payment of a

specific sum of money and the maximum amount secured or which by any contingency may be secured by the mortgage is not expressed therein, such mortgage shall be taxable under section two hundred and fifty-three of this chapter upon the value of the property covered by the mortgage, which shall be determined by the recording officer to whom such mortgage is presented for record, unless at the time of presenting such mortgage for record the owner thereof shall file with the recording officer a sworn statement of the maximum amount secured or which under any contingency may be secured by the mortgage. If such maximum amount is expressed in the mortgage or in a sworn statement filed as required by this section, such amount shall be the basis for assessing the tax imposed by this article. A statement filed by the owner of a mortgage pursuant to this section shall thereafter at all times be binding upon and conclusive against such owner, the holders of any bonds or obligations secured by such mortgage and all persons claiming through the mortgagee any interest in the mortgage or the mortgaged premises. If the maximum amount secured or which by any contingency may be secured by the mortgage is not expressed in the mortgage or in a sworn statement as authorized by this section, the recording officer at the time such mortgage is offered for record may require the mortgagor or mortgagee to furnish him with proofs as to such facts as he deems necessary for the purpose of computing the value of the property covered by the mortgage and such proofs shall include an affidavit of appraisal of the value of the property made by at least two competent, disinterested persons and shall be preserved in his office. His determination and copies of the proofs as to the basis for computing the tax on such mortgage shall be forwarded to and subject to review by the state tax commission. Such mortgage shall not be recorded until the statement is filed or the proofs are furnished as required by this article. (*Amended by L. 1913, ch. 665, and L. 1916, ch. 323, § 69, in effect Apr. 26, 1916.*)

§ 258. Effect of nonpayment of taxes.—No mortgage of real property shall be recorded by any county clerk or register, unless there shall be paid the tax imposed by and as in this article provided. No mortgage of real property which is subject to the taxes imposed by this article shall be released, discharged of record or received in evidence in any action or proceeding, nor shall any assignment of or agreement extending any such mortgage be recorded unless the taxes imposed thereon by this article shall have been paid as provided in this article. No judgment or final order in any action or proceeding shall be made for the foreclosure or the enforcement of any mortgage which is subject to the tax imposed by this article or of any debt or obligation secured by any such mortgage, unless the taxes imposed by this article shall have been paid as provided in this article; and whenever it shall appear that any mortgage has been recorded or that any advance has been made on a prior advance mortgage or on a corporate trust mortgage without payment of the tax imposed by this arti-

cle there shall be paid in addition to the amount of the tax a sum equal to one per centum thereof for each month the tax remains unpaid, which sum shall be added to the tax and paid or collected therewith. (*Amended by L. 1913, ch. 665, and L. 1916, ch. 323, § 70, in effect Apr. 26, 1916.*)

§ 259. **Trust mortgages.**—In the case of mortgages made by corporations in trust to secure payment of bonds or obligations issued or to be issued thereafter, if the total amount of principal indebtedness which under any contingency may be advanced or accrue or which may become secured by any such mortgage which is subject to this article has not been advanced or accrued thereon or become secured thereby before such mortgage is recorded, it may contain at the end thereof a statement of the amount which at the time of the execution and delivery thereof has been advanced or accrued thereon, or which is then secured by such mortgage; thereupon the tax payable on the recording of the mortgage shall be computed on the basis of the amount so stated to have been so advanced or accrued thereon or which is stated to be secured thereby. Such statement shall thereafter at all times be binding upon and conclusive against the mortgagee, the holders of any bonds or obligations secured by such mortgage and all persons claiming through the mortgagee any interest in the mortgage or in the mortgaged premises. Whenever a further amount is to be advanced under the original mortgage, or shall accrue thereon or become secured thereby, the corporation making such mortgage shall pay the tax on such amount at or before the time when such amount is to be advanced, accrues or becomes secured and shall, at the time of paying such tax, file in the office of the recording officer where such mortgage has been or is first recorded and with the tax commission a statement, verified by the secretary, treasurer or other proper officer, of said corporation of the amount of principal indebtedness to be so advanced, accruing or becoming secured, and the certification of any bond or bonds by the trust mortgagee shall be deemed an advance under this article. Such additional tax shall be paid to the recording officer where such mortgage has been or is first recorded and a receipt therefor shall be endorsed upon the mortgage and payment therefor shall be noted in the margin of the record of such mortgage and if requested a duplicate receipt for such payment shall also be given to the party paying such tax and the note of such payment or additional payment or such receipt shall have the same force and effect as the record of receipt of the tax which under this article is payable at or before the recording of the mortgage. If such additional tax is not paid as required by this section, the trust mortgagee shall not certify any bond or other obligation issued on account thereof. The corporation making such mortgage or the owner of the property which secures the mortgage debt shall annually within thirty days after July first, and until it shall appear by such statement that the maximum amount of principal indebtedness secured by such mortgage has been advanced, has accrued or become secured and the tax

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Mortgage tax.

§ 260.

thereon paid, file in the office of the tax commission and the recording officer where such mortgage has been or is first recorded a statement, verified by the secretary, treasurer or other proper officer of said corporation, showing:

1. The name of the mortgagor and the mortgagee;
2. The date of the mortgage and the county where first recorded;
3. The maximum amount of principal debt or obligation which under any contingency may be secured by such mortgage;
4. The amount advanced on such mortgage during the year ending June thirtieth preceding, with the date and amount of each advancement;
5. In the case of a mortgage recorded prior to July first, nineteen hundred and six, the first annual statement filed under this section as hereby amended, shall state the total amount advanced prior to July first, nineteen hundred and six, and the date and the amount of each subsequent advancement to the end of the period covered by the statement.

A failure to file any statement required by this section within the time required shall subject the corporation making such mortgage to a penalty of one hundred dollars per day for each day such failure continues, recoverable by the attorney-general in an action brought in the name of the people of the state of New York. (*Amended by L. 1909, ch. 412, L. 1913, ch. 665, and L. 1916, ch. 323, § 71, in effect Apr. 26, 1916.*)

§ 260. Determination and apportionment by the state tax commission.—When the real property covered by a mortgage is situated in more than one tax district, the state tax commission shall deduct from the relative assessments of such real property in the respective tax districts covered by such mortgage any prior existing mortgage liens and shall then apportion the tax paid on such mortgage between the respective tax districts upon the basis of the relative assessments of such real property as the same appear on the last assessment-rolls less the deduction, if any. If, however, the whole or any part of the property covered by such a mortgage is not assessed upon the last assessment-roll or rolls of the tax district or districts in which it is situated, or is so assessed, as part of a larger tract, that the assessed value cannot be determined, or if improvements have been made to such an extent as materially to change the value of the property so assessed, the tax commission may require the local assessors in the respective tax districts, or the mortgagor, or mortgagee, to furnish sworn appraisals of the property in each tax district, and upon such appraisals shall determine the apportionment. If such mortgage covers real property in two or more counties, the tax commission shall determine the proportion of the tax which shall be paid by the recording officer who has received the same to the recording officers of the other counties in which are situated the tax districts entitled to share therein. When any recording officer shall pay any portion of a tax to the recording officer of another county, he shall forward with such tax a description sufficient to identify the mortgage on

which the tax has been paid, and the recording officer receiving such tax shall note on the margin of the record of such mortgage the fact of such payment, attested by his signature. The tax commission shall make an order of determination and apportionment in respect to each such mortgage and file a certified copy thereof with the recording officer of each county in which a part of the mortgaged real property is situated.

When the real property covered by a mortgage is partly within the state and partly without the state it shall be the duty of the tax commission to determine what portion of the mortgage or of advancements thereon shall be taxable under this article. Such determination shall be made in the following manner: First: Determine the respective values of the property within and without the state, and deduct therefrom the amount of any prior existing mortgage liens, excepting such liens as are to be replaced by the advancements under consideration. Second: Find the ratio that the net value of the mortgaged property within the state bears to the net value of the entire mortgaged property. Third: Make the determination of the portion of the mortgage or of the advancements thereon which shall be taxable under this article by applying the ratio so found. If a mortgage covering property partly within and partly without the state is presented for record before such determination has been made, or at the time when an advance is made on a corporate trust mortgage or on a prior advance mortgage, there may be presented to the recording officer a statement in duplicate verified by the mortgagor or an officer or duly authorized agent of the mortgagor, in which shall be specified the net value of the property within the state and the net value of the property without the state covered by such mortgage. One of such statements shall be filed by the recording officer and the other shall be forthwith transmitted by him to the state tax commission. The tax payable under this article before the determination by the tax commission shall be computed upon such portion of the principal indebtedness secured by the mortgage, or of the sum advanced thereon, as the net value of the mortgaged property within the state bears to the net value of the entire mortgaged property as set forth in such statement. The tax commission shall on receipt of the statement from the recording officer and on not less than ten days' notice served personally or by mail upon the mortgagor, the mortgagee and the state comptroller, proceed to make the required determination. In determining the separate values of the property within and without the state the tax commission shall consider only the tangible property, real and personal, except that leases of real property shall be deemed tangible property. For the purpose of determining such value the tax commission may require the mortgagor or mortgagee to furnish by affidavit or verified report such information or data as it may deem necessary, and may require and take the testimony of the mortgagor, mortgagee or any other person. A certified copy of the order of determination and apportionment shall be delivered personally or by mail to the mortgagor, the mortgagee and the state comptroller, and

any tax under such determination which has not been paid shall be paid within ten days after service of such certified copy; if, however, the tax paid at the time of filing the statement hereinbefore specified with the recording officer is in excess of the tax determined to be payable, the certificate of determination and apportionment shall direct the recording officer to refund to the person paying such tax the amount of such excess; provided that no refund shall be made of any taxes paid pursuant to a previous determination.

The mortgagor or mortgagee of any mortgage which covers property within and without the state may waive the determination provided for in this section and pay the tax upon the full amount of such mortgage or of any advancement thereon, and thereafter the whole amount of such mortgage or advancement shall be exempt from taxation under the provisions of section two hundred and fifty-one of this article.

The tax commission shall adopt rules to govern the procedure and the manner of taking evidence in all the matters provided for by this section and may require verified statements to be furnished either by boards of assessors, recording officers or other persons having knowledge in relation to such matters. Failure on the part of any person or officer to furnish a statement or other data when required so to do pursuant to the provisions of this section shall render such person or officer liable to a penalty of one hundred dollars, to be recovered by the attorney-general in an action brought in the name of the people of the state of New York.

In making determination and apportionment under this section the tax commission shall consider all advancements made upon a mortgage after July first, nineteen hundred and six, in the aggregate, which aggregate shall be obtained by adding all advancements made after July first, nineteen hundred and six, to the last advancement and the total shall be treated as a whole mortgage, considering the status of the property as of the time the last advancement is made. In all cases under this section in which it shall appear that the prior incumbrances exceed the assessed or appraised value of the property in one or more tax districts the commission may, by a process of equalization or otherwise, establish a basis of apportionment that will be equitable and fair.

In any case where a determination has been made pursuant to this section in respect to a mortgage or advancements upon a mortgage covering property within and without the state and the tax has been paid upon a portion of the indebtedness secured by such mortgage pursuant to such determination, the mortgagor or mortgagee or the owner of any bonds secured by such mortgage may file with the recording officer where such mortgage is first recorded a verified statement in form and substance as provided for in section two hundred and sixty-four of this article, which statement shall also specify the portion of the indebtedness secured by such mortgage or bonds upon which the tax has been paid, and thereupon the recording officer shall collect the tax upon the remaining portion of

such mortgage or bonds, and all of the provisions of said section two hundred and sixty-four in respect to the indorsement of the payment of the tax and notation on the margin of the record of the mortgage shall be applicable to taxes paid upon such remaining portion, and thereafter the whole amount of such mortgage, advancement or bonds shall be exempt from taxation under the provisions of section two hundred and fifty-one of this article. (*Former § 260 repealed and new section added by L. 1916, ch. 335, in effect Apr. 27, 1916.*)

Application.—The State Tax Commission in making a determination of the relative proportion of advancements made upon mortgages executed by a railroad and taxable within this State, shall consider the property leased by such company as a part of the “tangible” property. The words “shall consider only the value of the tangible property covered by such mortgage” are mandatory. Atty. Genl. Opin. (1915), 4 State Dep. Rep. 524.

§ 261. **Payment over and distribution of taxes.**—Upon the first day of each month the recording officer of each county shall pay over to the county treasurer all moneys received during the preceding month upon account of taxes paid to him as herein prescribed, after deducting the necessary expenses of his office as provided in section two hundred and sixty-two, except taxes paid upon mortgages which under the provisions of section two hundred and sixty are to be apportioned by the tax commission between several counties, which taxes and money shall be paid over by him as provided by the determination of said tax commission within five days after the filing of said determination in his office. The county treasurer of each county shall on the first day of January, April, July and October in each year, after having deducted the necessary expenses of his office provided in section two hundred and sixty-two, transmit one-half of this net amount collected under the provisions of this article to the state treasurer and shall receive from the state treasurer a receipt therefor countersigned by the comptroller. The remaining portion thereof in the counties of New York, Kings, Queens, Richmond and Bronx shall be paid into the general fund of the city of New York and be applied to the reduction of taxation, and in the other counties of the state the remaining portion shall be held by the respective county treasurers subject to the order of the board of supervisors as hereinafter provided. Prior to the first day of November in each year the recording officer shall cause to be prepared a statement containing a description of all mortgages upon which taxes have been paid by a reference to the date of each mortgage, the name of the mortgagor and mortgagee, the amount of the principal debt upon which the tax was paid together with the book and page where said mortgage is recorded, together with the tax district in which the mortgaged property is situated, and if situated in two or more tax districts the amount apportioned to each tax district by the tax commission, and the amount deducted for his necessary expenses as approved by the tax commission and shall file the statement with the clerk of the board of supervisors, and a copy thereof with the tax

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commission. The boards of supervisors of the several counties shall, on or before the fifteenth day of December in each year, ascertain from the statement filed with their clerk by the recording officer the location of the mortgaged property with respect to the several tax districts and the amount of tax properly to be credited to each tax district, which shall be applicable to the payment of state, county and city, or town expenses; except that where a town contains within its limits an incorporated village, or portion thereof, the supervisor shall apportion to the village or villages so much of the share credited to the said town as the assessed value of said village or portion thereof bears to twice the total assessed valuation of the town, and the remaining balance shall be applicable to the payment of state, county and town taxes. The board of supervisors of each county, on or before the fifteenth day of December each year, shall determine the respective sums applicable hereunder to each of the foregoing purposes and shall issue their warrant for the payment to the city treasurer or town supervisor, of the amount payable to said city or town, and their warrant for the payment to the village treasurer of the sum of money to which the village shall be entitled, which sum shall be credited to the general fund of the village. (*Amended by L. 1914, ch. 399, and L. 1916, ch. 323, § 72, in effect Apr. 26, 1916.*)

§ 262. **Expenses of officers.**—Recording officers and county treasurers shall severally be entitled to receive all their necessary expenses for the purposes of this article, including printing, hire of clerks and assistants, being first approved and allowed by the tax commission, which shall be retained by them out of the moneys coming into their hands. (*Amended by L. 1916, ch. 323, § 73, in effect Apr. 26, 1916.*)

§ 263. **Supervisory power of tax commission and comptroller.**—The tax commission shall have general supervisory power over all recording officers in respect of the duties imposed by this article and they may make such rules and regulations for the government of recording officers in respect to the matters provided for in this article as they may deem proper, provided that such rules and regulations shall not be inconsistent with this or any other statute. Whenever a duly verified application for a refund of mortgage taxes, erroneously collected by a recording officer, is made to the tax commission it shall be the duty of such commission to determine the amount that has been erroneously collected and make an order directing such recording officer to refund the amount so determined from mortgage tax moneys in his hands, or which shall come to his hands, to the party entitled to receive it and charge such amount back to the tax district that may have been credited with the same. If any recording officer shall have collected and paid over to the treasurer of any county, a tax paid upon a mortgage which under the provisions of section two hundred and sixty of this chapter is to be apportioned by the tax commission between several counties before such apportionment has been made, or if any recording of-

ficer shall have paid over to such treasurer more money than required on account of mortgage taxes such recording officer shall make a report to the tax commission in the form of a verified statement of facts and said commission shall determine the method of adjustment and issue its order accordingly. The comptroller shall have general supervisory power over all county treasurers in respect to the duties imposed upon them by this article, and may make such rules and regulations, not inconsistent with this or any other statute, for the government of said county treasurers as he deems proper to secure a due accounting for all taxes and moneys collected or received pursuant to any provision of this article. All recording officers and county treasurers shall furnish such bond, conditioned for the faithful and diligent discharge of the duties required of them respectively by this article, to the people of the state, within such time, with such sureties and in such penal amount, not exceeding twenty-five thousand dollars, as the comptroller may prescribe. The provisions of this section shall cover all transactions subsequent to July first, nineteen hundred and five. (*Amended by L. 1914, ch. 398, L. 1915, ch. 447, and L. 1916, ch. 336, in effect Apr. 27, 1916.*)

§ 264. **Tax on prior advance mortgages.**—Whenever any part of the amount of the principal indebtedness which is or under any contingency may be secured by a mortgage recorded prior to July first, nineteen hundred and six, is advanced after July first, nineteen hundred and six, the tax prescribed by section two hundred and fifty-three of this article is hereby imposed on the amount of principal indebtedness so advanced, which tax shall be payable at the same time and in the same manner as taxes imposed by section two hundred and fifty-nine of this article, and all the provisions of section two hundred and fifty-nine in relation to the time and manner of paying such tax, the filing of statements in relation to the time and amount of such advances, and penalties for failure to file the same shall apply to advances made under this section and the payment of a tax thereon, except that if the mortgagor is not a corporation, such statements shall be filed by the owner of the mortgage, who, for failure to do so, shall be subject to the penalties prescribed by such section. In case said mortgage was given to secure the payment of a series of bonds, the mortgagor may, at the time of paying such tax, present to the recording officer, the bonds representing the portion of the principal indebtedness secured by said mortgage upon which the tax is to be paid, and also file with said recording officer a statement verified by the mortgagor or an officer or duly authorized agent or attorney of the mortgagor specifying that said bonds, so presented, are the bonds representing that portion of the principal indebtedness secured by said mortgage upon which the tax is to be paid and that said bonds are secured by a mortgage recorded in said office stating the date of said mortgage and the liber and page of the record of the same. It shall be the duty of such recording officer to indorse upon

each of said bonds, so presented to him, a statement signed by him to the effect that the tax imposed by this article on that portion of the principal indebtedness secured by said mortgage represented by said bonds has been paid, and said statement shall be conclusive proof of such payment. Notwithstanding the exception contained in section two hundred and fifty-four, the record owner of any mortgage recorded prior to July first, nineteen hundred and six, other than a corporate trust mortgage, may file in the office of the recording officer where such mortgage is first recorded a statement in form and substance as required by section two hundred and fifty-four of this article, except that it shall specify and state the amount of all advancements made thereon prior to said date, giving the date and amount of each advancement and the amount of such prior advancements remaining unpaid, and thereby elect that the same be taxed under this article; and any mortgagor or mortgagee under a corporate trust mortgage given to secure a series of bonds or the owner of any such bond or bonds secured thereby may file in the office of the recording officer where such mortgage is first recorded a statement in form and substance as required by section two hundred and fifty-four of this article, except that it shall specify the serial number, the date and amount of each bond and otherwise sufficiently describe the same to identify it as being secured by such mortgage, and thereby elect that such bond or bonds be taxed under this article, and such bond or bonds shall be taxed upon the whole amount thereof notwithstanding the provisions of section two hundred and sixty of this article. A tax shall thereupon, in the case of mortgages other than corporate trust mortgages, be computed, levied and collected upon the amount of the principal debt or obligation represented by said unpaid prior advancements at the time of filing such statement, or, in the case of a corporate trust mortgage, upon the amount of the bond or bonds specified in the statement filed, at the rate prescribed by section two hundred and fifty-three of this article. Said bonds representing prior advancements under corporate trust mortgages and taxed as herein provided may be presented to the recording officer, whose duty it is to collect said tax, for indorsement and he shall thereupon indorse upon each of said bonds a statement, attested by his signature, of the payment of the tax as provided in this section in respect to bonds representing subsequent advancements, and the record owner of any other mortgage taxed upon prior advancements as herein provided may present said mortgage to the recording officer and thereupon such officer shall note upon the same the filing of the statement and the amount of the tax paid, attested by his signature. In all such cases the recording officer shall note on the margin of the record of such mortgage the filing of such statement and the amount of the tax paid, and, in case of bonds secured by corporate trust mortgages, the serial number of each such bond. The words "bond" and "bonds" as used in this section shall be deemed to embrace all notes or other evidences of indebtedness secured by mortgages taxable under this section. In case of any mort-

gage taxable under this section, the portion of the indebtedness secured thereby upon which the tax imposed by this section is paid, and such portion only, shall be exempt from taxation under the provisions of section two hundred and fifty-one of this article. Whenever the tax imposed by section two hundred and sixty-four of this article as said section existed prior to May thirteenth, nineteen hundred and seven, has been paid with respect to any mortgage, no additional tax shall accrue on such mortgage under this section as hereby enacted and such mortgage and the debt or obligation secured thereby, shall continue to be entitled to the exemptions and immunities conferred by this article and all of the provisions of this article shall remain applicable to such mortgage. All taxes imposed by or which became due, payable or collectible on or before the thirtieth day of June, nineteen hundred and six, pursuant to chapter seven hundred and twenty-nine of the laws of nineteen hundred and five, and all taxes which under section two hundred and fifty-eight of this chapter became due and payable on the thirtieth day of July, nineteen hundred and six, and all other taxes, if any, which were imposed by chapter seven hundred and twenty-nine of the laws of nineteen hundred and five on any mortgage recorded prior to the first day of July, nineteen hundred and six, in respect to any period ending on or before the first day of July, nineteen hundred and six, shall be imposed, become due, be payable and collectible and shall be paid over and distributed in the same manner, and with the same force and effect as if this article had not been enacted; and for the purpose of collecting, paying over, distributing and enforcing any such taxes, chapter seven hundred and twenty-nine of the laws of nineteen hundred and five shall be deemed to be in force, and the lien for such taxes shall attach and such taxes shall be levied and collected as provided in chapter seven hundred and twenty-nine of the laws of nineteen hundred and five, anything herein contained to the contrary notwithstanding. (*Amended by L. 1910, ch. 601, and L. 1916, ch. 337, in effect Apr. 27, 1916.*)

§ 265. **Tax a lien; exceptions.**—The tax in this article imposed shall be deemed and is hereby declared to be a lien upon the mortgage upon which such tax is imposed and upon the debt or obligation secured thereby, except that upon mortgages recorded prior to July first, nineteen hundred and six, such lien shall extend only to that portion thereof represented by the amount advanced subsequently to such date and to the debt or obligation secured by such advancement, and for the purpose of enforcing the payment of the tax in this article imposed, such mortgage and the debt thereby secured shall be deemed to be property within this state notwithstanding that such mortgage may be owned by or be in the possession of a person or corporation outside the state, and a copy thereof duly certified by the recording officer of any county in which such mortgage is recorded shall, for the purpose of enforcing the payment of such tax, be deemed to be, and shall have the same force and effect as the original

mortgage and may be sold to satisfy such tax and upon a sale of the whole or any part thereof, shall carry with it and transfer to the purchaser all the rights, interests and obligations of the mortgagee therein named or his assignee or successor in interest in and to such mortgage and the debt secured thereby, or the part thereof to which such lien attaches, together with interest and costs. (*Added by L. 1909, ch. 412, and amended by L. 1916, ch. 323, § 74, in effect Apr. 26, 1916.*)

§ 266. **Enforcement; procedure.**—In case the tax imposed by this article is not paid as in this article provided, the tax commission may notify the attorney-general of such failure or refusal to pay and it shall then be the duty of the attorney-general to enforce the payment of such tax, and for that purpose he may maintain an action in the name of the people of the state of New York, in any court of competent jurisdiction, either to sell such mortgage; or, he may maintain an action against the mortgagee or his assignee or successor in interest personally; or, whereby stipulations contained in such mortgage it is made the duty of the mortgagor to pay such tax, then against the mortgagor or his successor in interest personally; or, in the case of a trust mortgage against the trust mortgagee, personally; or, he may pursue either, any or all such remedies. All actions instituted by the attorney-general, as herein provided, shall, if the amount involved is fifty dollars or more, be brought in the county of Albany. Where, in any action, a recovery is had there shall be added to the amount of such tax and included in the judgment, interest at the rate of one per centum per month on the amount of such tax, to be computed from the date on which such tax became due and payable, except that in the case of taxable mortgages heretofore recorded and upon which the tax imposed by this article has not been paid, and where, in such case, no penalty is prescribed by law for the nonpayment of such tax, interest shall be added at the rate of six per centum per annum. In any action brought as herein provided, where the judgment provides for the sale of the mortgage, such judgment shall also prescribe the time, place and manner of such sale and of the notice thereof to be given, and, in the discretion of the court, may direct that such sale be made by or under the direction of the comptroller or the recording officer of the county in which such mortgage was first recorded, and all money recovered in such action shall be paid by the attorney-general to the proper recording officer in satisfaction of such tax, and all costs recovered therein shall be paid into the state treasury. (*Added by L. 1909, ch. 412, and amended by L. 1916, ch. 323, § 75, in effect Apr. 26, 1916.*)

§ 270. **Stock transfer tax; amount of tax.**

Claim for transfer stamps erroneously affixed to certain shares of stock and trust certificates, allowed. Atty. Genl. Opin. (1915), 4 State Dep. Rep. 273.

§ 271-a. **Sale of stamps.**—No person, firm, company, association or corporation other than a corporation organized under the banking law of this

§§ 271a, 272, 290.

Stock transfer tax.

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state or under the national bank act of the United States, or a duly authorized agent of the comptroller, shall sell or expose for sale, traffic in, trade, barter or exchange any stamp issued pursuant to this article, and purchased or acquired by him after the time when this section as hereby amended takes effect, without first obtaining from the comptroller his written consent to sell, traffic in, trade, barter or exchange such stamps, except that in connection with a sale of or agreement to sell stock a broker or agent of the principal making such sale or agreement to sell may supply and affix the stamp or stamps required by this article. No person shall sell or expose for sale any stamp so purchased or acquired for a sum less than the face value thereof without the written consent of the comptroller. Any person lawfully in possession of unused stamps may request the comptroller for his consent to sell or dispose of the same. He shall present to the comptroller, if so required, a sworn statement setting forth the name and address of the owner and the party desiring to sell or dispose of said stamps, how, when and from whom the same were acquired and the name and address of the person or persons to whom it is proposed to sell or dispose of the same, and such other pertinent and relevant information as the comptroller may require. Thereupon the comptroller may give his written consent to sell the same. Upon the failure or refusal of the comptroller to give such consent the same may be enforced by mandamus. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than five hundred nor more than one thousand dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court. (*Added by L. 1911, ch. 12, and amended by L. 1913, ch. 811, and L. 1916, ch. 552, in effect May 15, 1916.*)

§ 272. Penalty for failure to pay tax.

A gift of securities by a father to a child, *non sui juris* imposes no duty on her to affix a transfer stamp. *Ambrosius v. Ambrosius* (1915), 167 App. Div. 244, 152 N. Y. Supp. 562.

§ 280. Refund of tax erroneously paid.

An action for a refund may be maintained by a broker although he affixed the stamps for the benefit of a customer. The remedy is not for the benefit of the customer alone. *Van Antwerp v. State* (1915), 170 App. Div. 98, 155 N. Y. Supp. 694.

§ 290. Contents of petition.—Any person assessed upon any assessment-roll, claiming to be aggrieved by any assessment for property therein, may present to the supreme court a petition duly verified setting forth that the assessment is illegal, specifying the grounds of the alleged illegality, or if erroneous by reason of overvaluation, stating the extent of such overvaluation, or if unequal in that the assessment has been made at a higher proportionate valuation than the assessment of other property on the same

L. 1916, ch. 323.

Review of assessments.

§§ 293, 293a.

roll by the same officers, specifying the instances in which such inequality exists, and the extent thereof, and stating that he is or will be injured thereby. Such petition must show that the application has been made in due time to the proper officers to correct such assessment. Two or more persons assessed upon the same roll who are affected in the same manner by the alleged illegality, error or inequality, may unite in the same petition. (*Amended by L. 1916, ch. 323, § 76, in effect Apr. 26, 1916.*)

§ 293. **Proceedings upon return.**—If it shall appear upon the return to any such writ that the assessment complained of is illegal or erroneous or unequal for any of the reasons alleged in the petition, the court may order such assessment, if illegal, to be stricken from the roll, or if erroneous or unequal, it may order a reassessment of the property of the petitioner, or the correction of the assessment upon the roll, in whole or in part, in such manner as shall be in accordance with law, or as shall make it conform to the valuations and assessments of other property upon the same roll and secure equality of assessment. If upon the hearing it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or may appoint a referee to take such evidence as it may direct, and report the same to the court, with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. Upon such hearing the parties to the proceeding may mutually agree upon the number of pieces of property to be valued and the number of witnesses to be sworn on the subject of the value of such properties. But in case the parties fail to so agree, then upon application of either party the court shall determine the number of witnesses to be sworn and the number of the pieces of property to be valued and shall limit the same to such number as the court shall deem reasonable. (*Amended by L. 1909, ch. 330, L. 1911, ch. 302, and L. 1916, ch. 323, § 77, in effect Apr. 26, 1916.*)

Note.—The provisions of the section omitted are re-enacted in § 293-a, post.

§ 293-a. **Special proceedings concerning special franchise tax assessments.**—When the writ is obtained to review a special franchise assessment made pursuant to the provisions of article two of this chapter, upon the filing of the return to the writ the court may take such evidence as it may deem necessary, or may appoint a referee to take evidence and to hear, try and determine all questions raised by the petition and the return thereto and to make his findings and determinations therein, or, on motion of either party, the court may direct the place of trial changed to the county in which the special franchise under review is situated, and on an order duly entered granting such motion, the place of trial shall be deemed changed to the county designated and the papers and proceedings shall be certified to that county in the manner now provided by law

§§ 294, 296.

Refund of tax.

L. 1916, ch. 323.

in the case of a change in the place of trial of an action and all subsequent proceedings shall be had in the county so designated, as if the special proceedings had been originally instituted in that county, and the court may, upon the application of the attorney-general, upon cause shown, vacate any reference heretofore made in any proceeding instituted to review a special franchise assessment, made pursuant to the provisions of article two of this chapter. The governor may, upon the application of the attorney-general, upon cause shown, appoint extraordinary terms of the supreme court to be held in any judicial district and designate a justice to preside thereat, to try such special franchise cases. Such extraordinary term shall have jurisdiction over all special franchise cases arising in any tax district within the judicial district for which the term is appointed, without regard to the county in which the term is being held, and either party to a proceeding to review a special franchise assessment may at any time bring the proceeding on for a hearing or trial before said extraordinary term by serving upon the other party sixteen days' notice thereof by mail or fourteen days' notice personally. A new assessment or correction of an assessment made by order of the court shall have the same force and effect as if it had been so made by the proper officers within the time prescribed by law for making such assessment. (*Added by L. 1916, ch. 323, § 78, in effect Apr. 26, 1916.*)

Note.—Re-enacts a portion of former § 93.

§ 294. Costs; certiorari.

Certiorari; costs mandatory.—The provision that on certiorari to review an assessment, costs shall be awarded against the petitioner if the reduction thereby obtained is less than half the assessment, is mandatory, and under such circumstances the court has no discretionary power to refuse to award costs to the tax commissioners. *People ex rel. Loomis v. Purdy* (1915), 167 App. Div. 857, 153 N. Y. Supp. 793.

§ 296. Refund of tax paid upon illegal, erroneous or unequal assessment.—

If in a final order in any such proceeding it has been or shall be ordered or adjudged or determined that the assessment complained of was illegal, erroneous or unequal, and correcting or directing correction thereof, and such order shall not be made in time to enable the assessors or other officers to make a new or corrected assessment for the use of the board of supervisors or for the use of the town, village, city, school or special district officers levying any tax upon such property, the assessment of which has been or shall be so ordered or adjudged or determined to be illegal, erroneous or unequal, then any tax collected or to be collected upon such illegal, erroneous or unequal assessment shall be refunded as follows:

1. When such tax upon such illegal, erroneous or unequal assessment shall have been levied by the board of supervisors, then at an annual session of the board of supervisors held after the order for such correction has been granted and entered there shall be audited and allowed to the

petitioner or other person who shall have paid such tax, and included in the tax levy of the town, village, city or special district in which the property is situated, made next after the entry of such order, and paid to the petitioner, or other person paying the tax, the amount paid by him, in excess of what the tax would have been if the assessment had been made as ordered, adjudged or determined by such order of the court, together with the interest thereon from the date of payment. In case the amount deducted from such assessment by such order exceeds ten thousand dollars, so much of the tax as shall be refunded by reason of such corrected assessment, other than the proportion or percentage thereof collected for such town, village, city or special district purposes, shall be levied upon the county at large and paid with interest, to the petitioner or other person paying the tax without further audit; and the board of supervisors shall audit and levy upon such town, village, city or special district, the proportion or percentage of such excess of tax collected for such town, village, city or special district purposes, which shall be collected and paid with interest to the petitioner, or other person paying the tax, without other or further audit.

2. When a tax, or any part thereof upon such illegal, erroneous or unequal assessment shall have been levied by the proper officers of any city or village, solely for the benefit and purposes of such city or village, then the common council or other auditing officer or officers of such city or village shall immediately after such correction audit and allow, to the petitioner or other person who shall have paid such tax, or the part thereof levied solely for the benefit and purposes of such city or village, and include in the tax levy of such city or village in which the property is situated made next after the entry of such order and cause to be paid to such petitioner or other person paying such tax, or the part thereof levied solely for the benefit and purposes of such city or village, the amount paid by him in excess of what the tax or the part thereof levied solely for the benefit and purposes of such city or village, would have been if the assessment had been as ordered, adjudged or determined by such order of the court, together with interest thereon from the date of the payment.

3. When a tax shall have been levied and collected in any school district of this state upon any property within such district on any assessment value thereof which shall have been ascertained from a town assessment-roll and which assessment upon such town roll shall have been ordered, adjudged or determined by order of the court as aforesaid to have been illegal, erroneous or unequal and which assessment though made by town assessors was adopted and was used in such district for the purpose of taxation for school purposes, then and in such case the trustees of such school district shall audit and allow and cause to be paid to the petitioner, or other person who shall have paid such tax, the amount paid by him in excess of what the school tax would have been in such case if the assessment had been made as ordered, adjudged or determined by such order

§§ 298, 302, 306.

Enforcement of collection.

L. 1916, ch. 323.

of the court together with interest thereon from the date of the payment.

Application to the proper officer for the audit and allowance of such moneys must be made by the petitioner or other person paying such tax within three years after the entry of the final order ordering or adjudging or determining such assessment to have been illegal, erroneous or unequal; provided that the time of the pendency of any appeal in any such proceeding or from any such order shall not be deemed any part of such three years. (*Amended by L. 1915, ch. 470, and L. 1916, ch. 323, § 79, in effect Apr. 26, 1916.*)

§ 298. Application to county court where taxpayer has removed from the county.—If it shall satisfactorily appear by affidavit to the county court of any county that a tax legally levied therein can not be collected because of the removal of the person taxed to any other county of the state, such court shall, upon application of the collector of any tax district or of the county treasurer of the county, grant an order, directed to the sheriff of the county where such person may be, to collect the same out of his personal property with interest at the rate of eight per centum per annum from the date of said order. Such order shall be filed in the office of the clerk of the county in which it is granted, and a certified copy thereof delivered to the constable or sheriff of the county where the person liable for the tax may be, and such constable or sheriff, on receiving the same shall execute it, and make a like return, and be entitled to the same fees and subject to the same liabilities and penalties for neglect as upon execution from any court of record. The sheriff receiving such moneys shall pay the same to the county treasurer of the county where it was levied, to the credit of the town in which it was assessed. (*Amended by L. 1916, ch. 323, § 80, in effect Apr. 26, 1916.*)

§ 302. Cancellation of personal tax where it is void for want of jurisdiction.—If a personal tax, levied against a person or corporation, is void for want of jurisdiction of such person or corporation and has been returned by the proper collector uncollectible for want of personal property out of which to collect the same, the person or corporation against whom the said tax was levied may then apply to the supreme or county court in the county in which is located the tax district where said tax was levied, for an order cancelling the said tax, and upon notice to the president of the village, county treasurer, supervisor of the town or, in the case of a city, upon notice to its attorney or to the corporation counsel, and upon satisfactory proof by affidavit, the court shall make an order directing the cancellation of said tax from the assessment roll by the county treasurer, comptroller, or other officer in whose custody and control the said roll may be. (*Amended by L. 1916, ch. 323, § 81, in effect Apr. 26, 1916.*)

§ 306. Attorney-general to bring action for sequestration.—It shall be the duty of the attorney-general, on being informed by the comptroller,

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Tax on secured debts.

§§ 320, 330.

tax commission or by the county treasurer of any county that any incorporated company refuses or neglects to pay the taxes imposed upon it, pursuant to articles one and two of this chapter, to bring an action in the supreme court for the sequestration of the property of such corporation and the court may so sequester the property of such corporation for the purpose of satisfying taxes in arrear, with the cost of prosecution, and may, also, in its discretion, enjoin such corporation and further proceedings under its charter until such tax and the costs incurred in the action shall be paid. The attorney-general may recover such tax with costs from such delinquent corporation by action in any court of record. (*Amended by L. 1916, ch. 323, § 82, in effect Apr. 26, 1916.*)

§ 320. Laws repealed.

Repeal by implication.—Special statute providing plan for collecting delinquent taxes in towns of Westchester county not repealed by implication, by enactment of General Tax Law. See *Carroll v. McArdle* (1915), 216 N. Y. 232.

ARTICLE XV.

(Former article 15 repealed and new article added by L. 1916, ch. 261, in effect Apr. 21, 1916.)

TAX ON SECURED DEBTS.

Section 330. Definitions.

- 331. Payment of tax on secured debt.
- 332. Stamps; how prepared and used.
- 333. No exemption unless stamps are affixed and canceled.
- 334. Contracts for dies; New York city office; expenses, how paid.
- 335. Illegal use of stamps; penalty.
- 336. No deduction of debts against taxable secured debt.
- 337. Application of taxes.
- 338. Exemption where tax has been paid on secured debts before May first, nineteen hundred and fifteen.
- 339. Exemption where tax has been paid on secured debts between May first, nineteen hundred and fifteen and November first, nineteen hundred and fifteen.
- 340. Apportionment of value of secured debt secured by mortgage of property situated partly within and partly without the state.

§ 330. Definitions.—The words “secured debts,” as used in this article, shall include:

(1) Any bond, note or debt secured by mortgage of real property situated wholly without the state of New York.

(2) Such proportion of a bond, note or debt, including a bond, note or printed obligation forming part of a series of similar bonds, notes or obligations, secured by mortgage or deed of trust recorded in the state of New York of property or properties situated partly within and partly without the state of New York as the value of that part of the mortgaged property or properties situated without the state of New York shall bear to the value of the entire mortgaged property or properties.

(3) Any and all bonds, notes or written or printed obligations, forming part of a series of similar bonds, notes or obligations, the payment of which is secured by a mortgage or deed of trust of real or personal property, or both, which mortgage or deed of trust is recorded in some place outside of the state of New York and not recorded in the state of New York.

(4) Any and all bonds, notes or written or printed obligations, forming part of a series of similar bonds, notes or obligations, which are secured by the deposit of any valuable securities, as collateral security for the payment of such bonds, notes or obligations, under a deed of trust or collateral agreement held by a trustee.

(5) Any bonds, debentures or notes, forming part of a series of similar bonds, debentures or notes, which by their terms are not payable within one year from their date of issue, and the payment of which is not secured by the deposit or pledge of any collateral security. The term "secured debts" as used in this article shall not include securities held as collateral to secure the payment of bonds taxable under this article or under article eleven of this chapter. (*Added by L. 1916, ch. 261, in effect Apr. 21, 1916.*)

Common school district bonds constitute secured debts within the meaning of subdivision 5 of this section (former section 330), which the comptroller should register and receive the tax thereon, provided said bonds or a description thereof be properly presented. Atty. Genl. Opin. (1915), 4 State Dep. Rep. 530.

§ 331. **Payment of tax on secured debt.**—After this article takes effect and before the first day of January, nineteen hundred and seventeen, any person may take or send to the office of the comptroller of this state any secured debt, and may pay to the state a tax at the rate of seventy-five cents on each one hundred dollars or fraction thereof of the face value of such secured debt, under such regulations as the comptroller may prescribe, and the comptroller shall thereupon affix secured debt stamps hereinafter provided for, to such secured debt, which stamps shall be duly signed by the comptroller or his duly authorized representative and dated as of the date of the payment of such tax. The comptroller shall keep a record of such secured debt together with the name and address of the person presenting the same and the date of registration.

All such secured debts shall thereafter be exempt from all taxation in the state or any of the municipalities or local divisions of the state except as provided in sections twenty-four, one hundred and eighty-seven, one hundred and eighty-eight and one hundred and eighty-nine of this chapter, and in articles ten and twelve of this chapter, for the period of five years from the payment of such tax. (*Added by L. 1916, ch. 261, in effect Apr. 21, 1916.*)

§ 332. **Stamps; how prepared and used.**—Adhesive stamps for the purpose of indicating the payment of the tax provided for by this article

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shall be prepared by the comptroller, in such form, and of such denominations and in such quantities as he may from time to time prescribe. Upon the payment of the tax provided by this article upon any secured debt the comptroller shall affix stamps of the proper denominations, equal in face value to the amount of tax paid, to the secured debt, and shall cancel the same by the seal of his office or by such other canceling device as he may prescribe. (*Added by L. 1916, ch. 261, in effect Apr. 21, 1916.*)

§ 333. **No exemption unless stamps are affixed and canceled.**—The payment of the tax upon any secured debt, as provided in this article, shall not exempt such secured debt from taxation, as provided in section three hundred and thirty-one, unless stamps to the proper amount are affixed and canceled, as provided in the preceding section. (*Added by L. 1916, ch. 261, in effect Apr. 21, 1916.*)

§ 334. **Contracts for dies; New York city office; expenses, how paid.**—The state comptroller is hereby directed to make, enter into and execute for and in behalf of the state such contract or contracts for dies, plates and printing necessary for the manufacture of the stamps provided for by this article, and provide such stationery and clerk hire, together with such books and blanks as in his discretion may be necessary for putting into operation the provisions of this article; he shall be the custodian of all stamps, dies, plates or other material or thing furnished by him and used in the manufacture of such state tax stamps. In addition to the receipt of taxes payable as provided in this article at his office in the city of Albany, the comptroller shall maintain an office for the receipt of such taxes in the city of New York. He shall appoint, and may at pleasure remove, such assistants, clerks and other persons as may be necessary to carry out the provisions of this article and shall fix and determine their salaries. All expenses incurred by him and under his direction in carrying out the provisions of this article shall be paid to him by the state treasurer from any moneys appropriated by such purpose. (*Added by L. 1916, ch. 261, in effect Apr. 21, 1916.*)

§ 335. **Illegal use of stamps; penalty.**—Any person who shall wilfully remove or cause to be removed, alter or cause to be altered the canceling or defacing marks of any adhesive stamp provided for by this article with intent to use the same, or to cause the use of the same after it shall have been used, or shall knowingly or wilfully sell or buy any washed or restored stamp, or offer the same for sale, or give or expose the same to any person for use, or knowingly use the same or prepare the same with intent for the further use thereof, or shall wilfully use any counterfeit stamp or any forged stamp with intent to defraud the state of New York, shall be guilty of a misdemeanor and on conviction thereof shall be liable to a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned for not more than six months, or by both such fine and im-

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prisonment, at the discretion of the court. (*Added by L. 1916, ch. 261, in effect Apr. 21, 1916.*)

§ 336. No deduction of debts against taxable secured debt.—The owner of any secured debt, on which the tax provided for in this article has not been paid, shall be assessed upon such secured debt in the taxing district in which he resides, upon the fair market value of such secured debt and no deduction for the just debts owing by him shall be allowed against the assessed value of such secured debt, as provided in section twenty-one of this chapter or elsewhere in this chapter or in any other law of this state, except that the deduction from the taxable property permitted by section six of this chapter shall be allowed to any person, in respect of any secured debt which for the purpose of his business, as hereinafter described and not for or as an investment, shall be temporarily owned and held for sale by such person then actually engaged in the bona fide purchase and sale of such securities as a business, and who then shall have and maintain an office or place of business in this state for the carrying on of the actual bona fide business of purchasing and selling such securities as distinguished from the purchase thereof for investment, but such deduction shall not be allowed in respect of securities owned and held for a longer period than eight months. (*Added by L. 1916, ch. 261, in effect Apr. 21, 1916.*)

§ 337. Application of taxes.—The taxes imposed under this article and the revenues thereof shall be paid by the state comptroller into the state treasury and be applicable to the general fund, and to the payment of all claims and demands which are a lawful charge thereon. (*Added by L. 1916, ch. 261, in effect Apr. 21, 1916.*)

§ 338. Exemption where tax has been paid on secured debts before May first, nineteen hundred and fifteen.—If a tax shall have been paid upon a secured debt pursuant to article fifteen of the tax law prior to May first, nineteen hundred and fifteen, such secured debt shall be exempt from taxation hereunder and from all taxation in the state or any of the municipalities or local divisions of the state until maturity, except as provided in sections twenty-four, one hundred and eighty-seven, one hundred and eighty-eight and one hundred and eighty-nine of this chapter and in articles ten and twelve of this chapter. (*Added by L. 1916, ch. 261, in effect Apr. 21, 1916.*)

§ 339. Exemption where tax has been paid on secured debts between May first, nineteen hundred and fifteen and November first, nineteen hundred and fifteen.—If a tax shall have been paid upon a secured debt pursuant to article fifteen of the tax law, between May first, nineteen hundred and fifteen, and November first, nineteen hundred and fifteen, such secured debt shall be exempt from taxation hereunder, and from all taxation in the state or any of the municipalities or local divisions of the state, for the period of five years from the date of the payment of such tax, except as

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provided in sections twenty-four, one hundred and eighty-seven, one hundred and eighty-eight and one hundred and eighty-nine, of this chapter, and in articles ten and twelve of this chapter. (*Added by L. 1916, ch. 261, in effect Apr. 21, 1916.*)

§ 340. Apportionment of value of secured debt secured by mortgage of property situated partly within and partly without the state.—If a bond, note or debt be secured by mortgage or deed of trust recorded in the state of New York of property or properties, situated partly within and partly without the state of New York, and a proportion of such bond, note or debt constitutes a secured debt as provided by section three hundred and thirty, the holder of such secured debt may apply to the comptroller for a determination of the proportion of such bond, note or debt which is taxable as a secured debt under this article, and the comptroller shall, as soon as practicable thereafter, furnish to such applicant a determination upon which the tax imposed by this article on such secured debt shall be based, which determination shall be in the manner provided for in section two hundred and sixty of this chapter made in respect of the apportionment of the value of such mortgaged property in connection with the recording within the state of New York of the mortgage or other indenture by which such secured debt may be secured. (*Added by L. 1916, ch. 261, in effect Apr. 21, 1916.*)

L. 1916, ch. 261, § 2. Article fifteen of such chapter, as added by chapter eight hundred and two of the laws of nineteen hundred and eleven and amended by chapters one hundred and sixty-nine and four hundred and sixty-five of the laws of nineteen hundred and fifteen, is hereby repealed; but such repeal shall not affect or impair the exemptions provided for in sections three hundred and thirty-eight and three hundred and thirty-nine of the tax law as added by this act.

TELEGRAPH OPERATORS.

Employment of illiterate; Penal L., § 1982.

TENEMENT HOUSE LAW.

(L. 1909, ch. 99.)

§ 55. **Yard spaces of lots running through from street to street.**—Whenever a tenement house hereafter erected is upon a lot which runs through from one street to another street, and said lot is not less than seventy feet nor more than one hundred and five feet in depth, there shall be a yard space through the center of the lot midway between the two streets, which space shall extend across the full width of the lot and shall never be less than twelve feet in depth from wall to wall, and shall be increased in depth as prescribed in section fifty-three of this chapter. But where such building has no basement and the cellar ceiling is not more than two feet above the curb level, such yard space may start at the level of the second tier of beams. Where such lot is over one hundred and five feet in depth such yard space shall be left through the center of the lot midway between the two streets, and shall extend across the entire width of the lot, and shall not be less than twenty-four feet in depth from wall to wall, and shall be increased in depth as prescribed in section fifty-three of this chapter. In a fireproof tenement house hereafter erected in which one or more power passenger elevators are provided and operated, where such tenement house runs through from one street to another street, the two portions of the building may be connected and the yard between such portions built upon, but not above the level of the second tier of beams, nor so as to convert any unoccupied portion of such yard into a court less in size than the minimum size prescribed by sections fifty-eight and fifty-nine of this chapter. Where a single tenement house hereafter erected runs through from one street to another street and also occupies the entire block, no yard need be provided. Where a single tenement house hereafter erected is situated on a lot formed by the intersection of two streets at an acute angle, the yard of the said house need not extend across the entire width of the lot, provided that it extends to a point in line with the middle line of the block.

Nothing contained in this section shall be construed so as to require a yard for tenement houses hereafter erected upon lots running through from street to street in a gore shaped block when the average width of the block measured parallel with the side lot lines of the lots which run through from street to street is not more than seventy feet. (*Amended by L. 1912, ch. 454, and L. 1916, ch. 317, in effect Apr. 26, 1916.*)

§ 109. **Prohibited uses.**—No tenement house, or the lot or premises thereof shall be used for a lodging house or stable, or for the storage or handling of rags. No tenement house or any part thereof or the lot or premises thereof shall be used for the purpose of prostitution or assignation of any description. No horse, cow, calf, swine, sheep or goat shall be kept in a tenement house or on the same lot or premises thereof ex-

cept that, outside of the fire limits, not more than two horses may be kept on such lot or premises, provided they are stabled at least twenty feet distant from any building used for living purposes, and that such stabling is not detrimental to health in the opinion of the department charged with the enforcement of this chapter. In case the fire limits as they existed on April tenth, nineteen hundred and one, are extended, an existing stable permitted under the provisions of this section may be continued in accordance with such provisions. (*Amended by L. 1913, ch. 598, and L. 1916, ch. 318, in effect Apr. 26, 1916.*)

Constitutionality.—The provision that "No tenement house or any part thereof or the lot or premises thereof shall be used for the purpose of prostitution or assignation of any description," is a valid act of legislation in the exercise of the police power of the state, and for each and every violation thereof the owner of the tenement house is subject to the penalty of fifty dollars imposed by section 124 of the statute, to be recovered in a civil action. *Tenement House Department v. McDevitt* (1915), 215 N. Y. 160, affg. 165 App. Div. 367, 150 N. Y. Supp. 583.

§ 120. **Permit to commence building.**—Before the construction or alteration of a tenement house, or the alteration or conversion of a building for use as a tenement house, is commenced, and before the construction or alteration of any building or structure on the same lot with a tenement house, the owner, or his agent or architect, shall submit to the department charged with the enforcement of this chapter a detailed statement in writing, verified by the affidavit of the person making the same, of the specifications for the construction and for the light and ventilation of such tenement house or building, upon a blank or form to be furnished by such department, and also a full and complete copy of the plans of such work. Such statement shall give in full the name and residence, by street and number, of the owner or owners of such tenement house or building. If such construction, alteration or conversion is proposed to be made by any other person than the owner of the land in fee, such statement shall contain the full name and residence, by street and number, not only of the owner of the land, but of every person interested in such tenement house, either as owner, lessee or in any representative capacity. Said affidavit shall allege that said specifications and plans are true and contain a correct description of such tenement house, building, structure, lot and proposed work. The statements and affidavits herein provided for may be made by the owner, or the person who proposes to make the construction, alteration or conversion, or by his agent or architect. No person, however, shall be recognized as the agent or the owner, unless he shall file with the said department a written instrument, signed by such owner, designating him as such agent. Any false swearing in a material point in any such affidavit shall be deemed perjury. Such specifications, plans and statements shall be filed in the said department and shall be deemed public records, but no such specifications, plans or statements shall be removed from said department. The said department shall cause all such

plans and specifications to be examined. If such plans and specifications conform to the provisions of this chapter and to the building ordinances and regulations they shall be approved by such department, and a written certificate to that effect shall be issued to the person submitting the same. Nothing contained in this section shall prevent the department charged with the enforcement of this chapter from issuing a permit for the erection of the cellar walls of a tenement house, provided plans have been filed in the said department for the erection of such walls and have been found to conform to law, but no work shall be done above the first tier of beams under any such permit. The department may, from time to time, approve changes in any plans and specifications previously approved by it, provided the plans and specifications when so changed shall be in conformity with law. The construction, alteration or conversion of such tenement house, building or structure or any part thereof, shall not be commenced until the filing of such specifications, plans and statements, and the approval thereof, as above provided. The construction, alteration or conversion of such house, building or structure, shall be in accordance with such approved specifications and plans. Any permit or approval which may be issued by the department charged with the enforcement of this chapter but under which no work has been done above the foundation walls within one year from the time of the issuance of such permit or approval, shall expire by limitation. Said department shall have power to revoke or cancel any permit or approval in case of any failure or neglect to comply with any of the provisions of this chapter, or in case any false statement or representation is made in any specifications, plans or statements submitted or filed for such permit or approval. (*Amended by L. 1916, ch. 319, in effect Apr. 26, 1916.*)

§ 124. **Penalties for violations.**—Every person who shall violate or assist in the violation of any provision of this chapter shall be guilty of a misdemeanor punishable by imprisonment for ten days for each and every day that such violation shall continue, or by a fine of not less than ten dollars nor more than one hundred dollars if the offense be not wilful, or of two hundred and fifty dollars if the offense be wilful, and in every case of ten dollars for each day after the first that such violation shall continue, or by both such fine and imprisonment in the discretion of the court; provided, that the punishment for a violation of section one hundred and forty of this chapter shall be a fine of fifty dollars; and provided further, that the penalty for incumbrance of a fire-escape by an occupant of the tenement house shall be a fine of two dollars. The owner of any tenement house or part thereof, or of any building or structure upon the same lot with a tenement house, or of the said lot, where any violation of this chapter or a nuisance exists, and any person who shall violate or assist in violating any provision of this chapter, or any notice or order of the department charged with its enforcement, shall also jointly

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Penalties for violation.

§ 150.

and severally for each such violation and each such nuisance be subject to a civil penalty of fifty dollars. Such persons shall also be liable for all costs, expenses and disbursements paid or incurred by said department, by any of the officers thereof or by any agent, employee or contractor of the same, in the removal of any such nuisance or violation. Any person who having been served with a notice or order to remove any such nuisance or violation, shall fail to comply with said notice or order within five days after such service, or shall continue to violate any provision or requirement of this chapter in the respect named in said notice or order, shall also be subject to a civil penalty of two hundred and fifty dollars. For the recovery of any such penalties, costs, expenses or disbursements, an action may be brought in any court of civil jurisdiction in said cities. In case the notice required by section one hundred and forty of this chapter is not filed, or in case the owner, lessee or other person having control of such tenement house does not reside within the state, or cannot after diligent effort be served with process therein, the existence of a nuisance or of any violation of this chapter, or of any violation of an order or a notice made by said department, in said tenement house or on the lot on which it is situated, shall subject said tenement house and lot to a penalty of two hundred and fifty dollars. Said penalty shall be a lien upon said house and lot. (*Amended by L. 1916, ch. 319, in effect Apr. 26, 1916.*)

The penalty imposed by the statute is recoverable without reference to the knowledge or negligence of the owner, but the owner is not liable for the penalty because of a single act of vice, undiscovered and undiscoverable either by him or his agent. There must be a condition of permanence sufficient to constitute a use of the premises for the prohibited acts, and proof of acts of vice on a single day by two female occupants of a tenement house, followed at once by their eviction, is not sufficient in itself to show that the building has been used for prostitution within the meaning of the statute. *Tenement House Department v. McDevitt* (1915), 215 N. Y. 160, *affg.* 165 App. Div. 367, 150 N. Y. Supp. 583.

Proof required.—In order to recover a penalty under this section for a violation of section 120, which provides: "The construction, alteration or conversion of such house, building or structure shall be in accordance with such approved specifications and plans," plaintiff must prove that after the plans were filed and approved alterations were made but not in conformity with the plans, and in the absence of proof that either or both of two sets of plans received in evidence were ever approved, or a permit issued thereunder, or that work had been done after the filing of the plans, defendant's motion for a dismissal of the complaint at the close of plaintiff's case should have been granted. *Tenement House Department v. Whitelaw* (1916), 93 Misc. 513, 157 N. Y. Supp. 277.

§ 150. Vagrancy.

The amendment of 1915, to this section does not repeal by implication section 89(5) of chapter 655 of the Laws of 1910 known as the Inferior Criminal Courts Act as amended by Laws of 1912, chap. 460; Laws of 1913, chap. 372, and Laws of 1914, chap. 454. *People ex rel. Brady v. Maher* (1915), 92 Misc. 50, 155 N. Y. Supp. 279.

In order to sustain a conviction for a violation of subdivision 4 of this section,

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Laws and ordinances.

L. 1916, ch. 319.

as amended in 1913, it must be shown that defendant has knowledge that the house is a house of prostitution; such knowledge may be proven either by direct evidence or by circumstances from which such knowledge may be inferred. Where defendant was convicted in a Magistrate's Court of a violation of such statute, and the only evidence was that of a police officer who testified that he called with another man by whom he was introduced to this defendant and another woman; that the other man then left; that he, the officer, had a conversation about the weather with the other woman, and then was solicited and taken by her into another room; that the other woman there offered to commit an act of prostitution, after which he placed the other woman under arrest, and he further testified that this defendant was present at the time of the conversation before he went into the other room but that he had no conversation with this defendant and that this defendant took no part in his conversation with the other woman, and it appears that after the arrest of the other woman the defendant was asked by the officer whether she lived in the premises and she said that she did, and had just paid the fourth month's rent, and she was thereupon placed under arrest, the conviction will be reversed and a new trial ordered. *People v. Brown* (1915), 92 Misc. 622, 157 N. Y. Supp. 465.

§ 151. Lien.

A complaint, in an action to recover a penalty under this section, alleging that on or about certain dates mentioned defendant tenement house was used as a house of prostitution in that "ill disposed persons and common prostitutes assembled therein at the time aforesaid and did there receive and entertain, and did there commit and perpetrate the practice of prostitution . . . with the permission of the owner of said house and its agent," states all the facts necessary to constitute a cause of action, though it also contains allegations purporting to bring the case within section 153 of said statute but which are immaterial to the cause of action, said section merely stating a rule of evidence whereby the consent of the owner may be proved and which will be ruled upon by the trial justice. *Tenement House Department v. Two Hundred and Two Hundred and Two Manhattan Ave.* (1914), 91 Misc. 618, 155 N. Y. Supp. 615.

§ 171. Laws repealed.—*Subd. 1, amended by L. 1916, ch. 319, in effect Apr. 26, 1916, as follows:*

1. All statutes of the state and ordinances of cities of the first class, so far as inconsistent with the provisions of this chapter, are hereby repealed; provided, that nothing in this chapter contained shall be construed as repealing or abrogating any present law or ordinance in any city of the first class, further restricting or prohibiting the occupation of cellars, or increasing the amount of air space to each individual occupying a room, or as prohibiting any future ordinance in respect thereto. Wherever the provisions of any local ordinance or regulation impose requirements for lower height of building or a less percentage of lot that may be occupied or require wider or larger courts or deeper yards, the provisions of such local ordinance or regulation shall govern. Where, however, the provisions of this chapter impose requirements for lower height of building or a less percentage of lot that may be occupied or require wider or larger courts or deeper yards, than are required by such local ordinance or regulation, the provisions of this chapter shall govern.

Cross-references.

THEATRICAL EMPLOYMENT AGENCIES.

Contracts; General Business L., § 183.

TORRENS LAW.

Amended; Real Property L., §§ 371 ff.

TOWN LAW.

(L. 1909, ch. 63.)

§ 46. **Special town meeting.**—Except as herein set forth special town meetings shall also be held whenever twenty-five taxpayers upon the last town assessment-roll shall, by written application addressed to the town clerk, require a special town meeting to be called, for the purpose of raising money for the support of the poor; or to vote upon the question of raising and appropriating money for the construction and maintenance of any bridges which the town may be authorized by law to erect or maintain; or for the purpose of determining in regard to the prosecution or defense of actions, or the raising of money therefor; or to vote upon any proposition which might have been determined by the electors of the town at the last biennial town meeting, but was not acted upon thereat; or to vote upon or determine any question, proposition or resolution which may lawfully be voted upon or determined at a special town meeting, except that in towns having an assessed valuation of ten million dollars or more, located within a county adjoining a city of the first class, propositions above specified shall be submitted on an application of taxpayers of such town, at a regular or special town meeting, only upon the application of at least one hundred taxpayers for the first ten million dollars of assessed valuation and by at least one hundred taxpayers for each additional ten million dollars of assessed valuation or major fraction thereof. Special town meetings may also be held upon the like application of the supervisor, commissioners of highways or overseers of the poor, to determine questions pertaining to their respective duties as such officers, and which the electors of a town have a right to determine. An application and notice heretofore made and given for a special town meeting to be hereafter held for a purpose not heretofore authorized by law, but now authorized by law, shall be as valid and of the same force and effect as if such purpose had been authorized by law at the time of such application and notice. All special town meetings in towns in which the regular biennial town meetings are held at the time of the general election may be held in any such town at one polling place therein, as near to the geographical center of the town as practicable, to be fixed by the town board, and shall be conducted by the justices of the peace and town clerk, the latter to act as clerk of such meeting. A resolution fixing such place shall remain in force in respect to subsequent special town meetings until abrogated by a like resolution changing such polling place. (*Amended by L. 1910, ch. 188, and L. 1916, ch. 341, in effect Apr. 27, 1916.*)

§ 48. **Notice of proposition to be determined by ballot.**—No proposition or other matter than the election of officers shall be voted upon by ballot at any town meeting, unless the town officers or at least twenty-five taxpayers upon the last preceding town assessment roll whose signatures shall be acknowledged in the same manner as a deed to be recorded, and

in towns with a population of more than ten thousand inhabitants as appears by the last federal census, at least fifty taxpayers upon the last preceding town assessment roll whose signatures shall be acknowledged in like manner, shall, at least twenty days before the town meeting, file with the town clerk a written application, plainly stating the question they desire to have voted upon, and requesting a vote thereon at such town meeting; provided, however, that in a town having less than fifteen hundred inhabitants, such application shall be sufficient if so signed and acknowledged by ten per centum of such taxpayers, but nothing herein contained shall require the signatures of over twenty-five taxpayers in such town. When town officers, as such, make the application for a vote to raise money for purposes pertaining to their duties, they shall file with their application a statement of their account to date, with the facts and circumstances which, in their opinion, make the appropriation applied for necessary, and their estimation of the sum necessary for the purpose stated, which statement may be examined by any elector of the town, and shall be publicly read by the town clerk at the meeting when and where the vote is taken, at the request of any elector. The town clerk shall, at the expense of his town, give at least ten days' notice, posted conspicuously in at least four of the most public places in the town, of any such proposed question, and that a vote will be taken by ballot at the town meeting mentioned. He shall also, at the expense of his town, provide a ballot box, properly labeled, briefly indicating the question to be voted upon, into which all ballots voted upon the question indicated shall be deposited. He shall also prepare and have at the town meeting a sufficient number of written or printed ballots, both for and against the question to be voted upon, for the use of the electors. The vote shall be canvassed, the result determined and entered upon the minutes of the meeting, the same as votes given for town officers. (*Amended by L. 1916, ch. 79, in effect Mch. 30, 1916.*)

§ 80. **Town officers.**—Except as otherwise provided in this section, there shall be elected at the biennial town meeting in each town, by ballot, one supervisor, one town clerk, two justices of the peace, two assessors, one collector, one or two overseers of the poor, not more than five constables and one superintendent of highways, excepting that in towns which shall have adopted a resolution that thereafter such town superintendent shall be appointed by the town board, pursuant to the provisions of section forty-one of the highway law, he shall be appointed as therein prescribed. Provided, however, that in towns in a county containing two hundred thousand or less inhabitants, according to the last federal census or state enumeration, adjoining a city of the first class containing a population of over one million, the town superintendent of highways hereafter elected or appointed shall hold office for the term of four years. At the first biennial town meeting in each town, after this section as hereby amended

§§ 85, 93.

Town officers; compensation.

L. 1916, ch. 93.

takes effect, two assessors shall be elected to hold office for two years and one assessor to hold office for four years. Of the two assessors chosen at any subsequent biennial town meeting in each town, one shall be elected to hold office for two years and one to hold office for four years. (*Amended by L. 1909, ch. 491, L. 1910, ch. 271, and L. 1916, ch. 346, in effect Apr. 27, 1916.*)

§ 85. *Compensation of town officers.—Subd. 1, as amended by L. 1909, ch. 491, L. 1915, chs. 73, 452, amended by L. 1916, ch. 93, by inserting new paragraph as follows:*

j. The town board of any town in a county having a population of two hundred thousand or less, according to the last federal or state census or enumeration, adjoining a city of the first class having a population of one million and upwards may, by a resolution, fix the compensation of the town clerk at not more than thirty-five hundred dollars per annum. The town clerks in such towns may, with the approval of the town board, appoint a deputy town clerk at a salary to be fixed by the town board not exceeding the sum of fifteen hundred dollars per annum. Such town clerk and deputy town clerk shall receive and collect the fees allowed by law and shall keep an accurate record of the same. At the end of each month, he shall make a verified report of such fees giving the date and amount of each fee and the person from whom received, which he shall file with the supervisor of the town, and pay over to such supervisor all the moneys so received during such month, to be paid by the supervisor into the town fund of such town.

Subd. 2, amended by L. 1916, ch. 93, in effect Mch. 30, 1916, as follows:

2. If a different rate is not otherwise established as herein provided, each inspector of election, ballot clerk and poll clerk is entitled to three dollars per day; but the town board may establish in its town a higher rate, not exceeding six dollars per day, but such election officers shall receive compensation for one day only for all services rendered on the day of election and in canvassing the votes thereafter, and in completing the returns.

§ 93. *Power of town clerk to appoint deputy.—*Every person hereafter elected or appointed to the office of town clerk, in any town in this state, immediately after taking the oath of office, may appoint a deputy town clerk for such town. Such appointment shall be in writing and shall be recorded in the record book of said town. Such deputy must be twenty-one years of age or over, a citizen of the United States and a resident of the town and shall take and subscribe the constitutional oath of office, and in the absence or inability to serve of the town clerk, is hereby authorized to perform any official act devolving upon town clerks, and shall hold office during the pleasure of the town clerk. Said deputy shall be paid for his services by the town clerk, but no charge shall be made against

L. 1916, ch. 21.

Supervisors; additional clerks, etc.

§§ 98, 125, 127.

the town for the services of said deputy. Nothing contained in this section shall prevent any town clerk from appointing his wife or daughter as such deputy. (*Amended by L. 1916, ch. 340, in effect Apr. 27, 1916.*)

§ 98. General duties of supervisor.—*Subd. 4, as amended by L. 1914, ch. 153, amended by L. 1916, ch. 347, in effect Apr. 27, 1916, as follows:*

4. On the Tuesday preceding the biennial town meeting, and on the corresponding date in each alternate year, account with the justices of the peace and town clerk of the town for the disbursement of all moneys received by him, including highway moneys received and disbursed by him as provided in the highway law, and a copy of such account shall thereupon be filed in the office of the town clerk, and attached thereto and made a part thereof shall be a certificate or certificates of the bank where the moneys of such town are deposited showing the amount of such moneys on deposit with said bank. The town board shall cause a certified copy of the report to be published in a newspaper published in the town, or if there be none published therein, then in a newspaper published within the county and having the greatest circulation within the town. If the biennial town meeting in any town is held at the time of a general election, such account shall be rendered on the twenty-eighth day of December in each year, or on the day preceding when such day falls on Sunday.

§ 125. Powers of supervisors and assessors in certain towns to employ clerks.—The supervisor of each town having a population, as appears by the last federal census, of fifteen thousand or more and where the assessed valuation of real estate is over fifteen million dollars, may in his discretion employ a clerk at a salary to be fixed by the town board of such town, except that in the county of Westchester such clerks may be employed in towns where the population, as appears by the last federal census, is ten thousand or more or where the assessed valuation of real estate is over six million dollars. The assessors of each town having a population, as appears by the last federal census, of fifteen thousand or more and where the assessed valuation of real estate is over fifteen million dollars, may also, in their discretion, employ a clerk at a salary to be fixed by the town board of such town. The assessors in each town in Suffolk county may also, in their discretion, employ clerks at a salary to be fixed by the town board of such town. The salaries of said clerks shall be paid by the supervisor of said town in equal monthly payments and shall be a town charge and shall be levied and collected in the same manner as other town charges. (*Added by L. 1913, ch. 163, amended by L. 1915, ch. 107, and L. 1916, ch. 21, in effect Mch. 6, 1916.*)

§ 127. Additional clerks and assistants for the town business, in certain towns.—In a town having a population of fifteen thousand or more, according to the next preceding federal or state census or enumeration, and in which the assessed valuation of real estate is or shall be over fifteen mil-

§§ 130, 131.

Regular meeting of town board.

L. 1916, ch. 59.

lion dollars, the town board may, by resolution, provide from time to time for the appointment of clerks, stenographers or other assistants for one or more town officers, in addition to other subordinates for any such officer provided for by law, and fix their salaries or compensation. A position so established may be abolished by the town board at any time. The town board may designate a particular officer or officers whom any such clerk, stenographer or assistant is to assist and may direct their transfer from one officer to another. Appointments to any such position shall be made by the town board. The salaries or compensation of any such clerk, stenographer or assistant shall be paid by the supervisor of the town in equal monthly payments and shall be a town charge and levied and collected in the same manner as other town charges. (*Added by L. 1916, ch. 157, in effect Apr. 7, 1916.*)

§ 130. Power of town board to fill vacancies.

Where a superintendent of highways fails to qualify for office in that his official oath is defective in omitting a statement that he has not directly or indirectly paid moneys or property to electors as a consideration for giving or withholding votes at the election, he is not entitled to hold office, and hence the town board has authority, under this section, to fill the vacancy by reappointing the former incumbent. *People ex rel. Preston v. Keator* (1915), 169 App. Div. 368, 154 N. Y. Supp. 1007.

Vacancies in the office of school director may be filled by the town board, in accordance with this section. *Atty. Genl. Opin., 6 State Dep. Rep. 425* (1915).

§ 131. Constitution and regular meeting of town board.—The supervisor, town clerk and the justices of the peace, or any two of such justices, shall constitute the town board in each town, and shall hold at least two meetings annually at the office of the town clerk, as follows: one on the Tuesday preceding the biennial town meeting and on the corresponding date in each alternate year, except that in towns where biennial town meetings are held at the time of a general election, such meetings shall be held on the twenty-eighth day of December in each year, unless such day is Sunday, in which case such meeting shall be held on the preceding day; and one on the Thursday next preceding the annual meeting of the board of supervisors. The supervisor of the town shall when present preside at all meetings of the town board. The supervisor or the town clerk may call a special meeting of the town board at any time by giving at least two days' notice in person or in writing to the other members of such board of the time when and place where such meeting is to be held. At any such regular or special meeting it shall be lawful for the town board to audit, allow or reject any charge, claim or demand against the town for which funds might lawfully be provided by the issuance and sale of town obligations under the provisions of section one hundred and thirty-eight-a of this chapter; and any charge, claim or demand so audited shall be payable immediately from available funds thus provided, if there be any, and otherwise as soon as the moneys are raised therefor under the

L. 1916, ch. 413.

Town physician.

§§ 141, 142.

provisions of said section one hundred and thirty-eight-a, but a charge, claim or demand of the kind authorized by this section to be audited may be paid, in the discretion of the town board, from other town funds on hand available for general purposes, if there be any such funds. (*Amended by L. 1909, ch. 140, L. 1913, ch. 571, and L. 1916, ch. 59, in effect Mch. 20, 1916.*)

§ 141. **Power of town board, in certain towns, to borrow money for the purpose of paying charges, claims or demands against the town.**—Whenever a town board or board of town auditors of any town, having a population of four thousand and upwards, shall have audited any account, and shall have allowed in whole or in part any charge, claim or demand against such town, and shall have made and filed a certificate to that effect in the office of the town clerk, and such account shall thereby have become a legal obligation and charge against such town, the town board, in anticipation of the taxes for the current fiscal year, shall have power to borrow upon the faith and credit of the town a sum of money sufficient to pay the aggregate amount of the accounts so audited and allowed at any one of the regular meetings held for that purpose, by issuing a temporary certificate or temporary certificates of indebtedness therefor, bearing interest and payable at such date or dates as may be fixed by such town board, but not for a longer period than sixteen months; and the proceeds of such loan shall be placed to the credit of the public officers charged by law with the payment of town claims. (*Added by L. 1912, ch. 258, and amended by L. 1916, ch. 81, in effect Mch. 30, 1916.*)

§ 142. **Town physician.**—The town board of any town containing a village or hamlet in which there is not a practicing physician residing within its boundaries or within a radius of eight miles thereof, may, at a special meeting called for that purpose, establish the office of town physician and fix the salary of such physician at not more than one thousand dollars per annum, and appoint to the office so created a duly qualified physician upon condition that he shall reside in such village or hamlet. The compensation of such town physician shall be a town charge and the sum necessary to pay the same shall be levied, collected and paid at the time and in the manner that other charges against the town are levied, collected and paid. It shall be the duty of a town physician so appointed to render to all poor persons within the town medical relief and attendance when requested so to do by the superintendent of the poor of the county in which the town is situated, or the supervisor of the town or an overseer of the poor of the town. If such town physician is also a local health officer he shall receive in addition the compensation of such officer as provided by law. (*Added by L. 1916, ch. 413, in effect May 3, 1916.*)

ARTICLE VI-A.

(Article added by L. 1916, ch. 396, in effect May 2, 1916.)

**PROVISIONS APPLICABLE TO CERTAIN TOWNS WHICH MAY ELECT TO COME
UNDER THE PROVISIONS OF THIS ARTICLE.**

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| Section 142. | Application. |
| 143. | Resolution of town board. |
| 144. | Fiscal year, departmental estimates. |
| 145. | Annual estimate. |
| 146. | Public hearing. |
| 147. | Annual appropriations. |
| 148. | Tax budget. |
| 149. | Temporary loans. |
| 149-a. | Contracts and expenditures prohibited. |
| 149-b. | Penalties for violation of preceding section. |
| 149-c. | Duties of supervisor. |
| 149-d. | Claims against town. |
| 149-e. | Saving clause. |

§ 142. **Application.**—This article shall apply to any town having more than five thousand inhabitants in which the assessed valuation of taxable property exceeds five million dollars and which by resolution of the town board, hereafter adopted, shall elect to make its provisions applicable to such town. (*Added by L. 1916, ch. 396, in effect May 2, 1916.*)

§ 143. **Resolution of town board.**—The town board of any such town at a special meeting called for that purpose by any of its members upon at least ten days' written notice of the time and place of holding the meeting and the purpose or object thereof served personally upon the other members of the board, may, by an affirmative vote of two-thirds of all the members of the board, elect to make this article applicable to such town. There shall be filed with the town clerk and incorporated in the minutes of meetings of the town board a copy of such notice, with proof of service thereof, upon each member of the board, and a copy of the resolution of the board showing the names of each member of the board present and voting, the number of votes cast for and against the resolution and the names of the members voting for and against it.

Upon the adoption of such resolution, the town clerk shall immediately make and certify copies of the resolution and of the record of its adoption and file the same as follows: One copy in the office of the county clerk of the county in which the town is situated; one copy with the clerk of the board of supervisors of the county in which the town is situated, which copy shall be reported by said clerk to the board of supervisors and published in its proceedings; and one copy in the office of the state comptroller. (*Added by L. 1916, ch. 396, in effect May 2, 1916.*)

§ 144. **Fiscal year; departmental estimates.**—The fiscal year of each such town shall hereafter commence and end on the days which may be now or

hereafter prescribed by law for such town. All officers, boards and commissioners of such town shall annually, at least forty days and not more than sixty days immediately preceding the date of the meeting of the board of supervisors at which taxes are levied in the county in which the town is situated, make and file with the town clerk of the town estimates in writing of the amount of expenditures for the next fiscal year in their respective offices, bureaus and departments, including a statement of their salaries and the salaries of all their subordinates, which estimates the town clerk shall lay before the town board at a meeting called for that purpose by him not less than twenty-five and not more than forty days preceding the date of such meeting of the board of supervisors in the county. The town clerk shall enter all such estimates in the minutes of the proceedings of the town board. (*Added by L. 1916, ch. 396, in effect May 2, 1916.*)

§ 145. **Annual estimates.**—The town board of the town shall, at least ten and not more than forty days prior to the date of the meeting of the board of supervisors at which taxes are levied in the county in which the town is situated, make an itemized statement in writing of the estimated revenues and expenditures of the town for the fiscal year for which estimates were filed with the town clerk, which shall be known as its annual estimate. The estimate of revenues shall contain an estimate of the probable revenues which in the judgment of the town board will be received by the town during the fiscal year, except from general taxes, less the amount required to be deposited to the credit of the sinking fund, if any; a statement of the amount of the sinking fund which in the judgment of the town board is available and should be applied to pay the principal of any bonded indebtedness of the town falling due during the said fiscal year; and a statement of all unexpended balances or estimated unexpended balances of the previous or current fiscal year remaining to the credit of the town or of any office, board or department thereof. The estimate of expenditures shall contain an estimate of the several amounts of money which the town board deems necessary to provide for the expenses of conducting the business of the town in each board, department and office thereof, separately stated, and for other purposes contemplated by this chapter and otherwise by law for the said fiscal year; to pay the principal and interest of any bonded or other indebtedness of the town falling due during the said fiscal year; and the amount of any judgment recovered against the town and payable during the said fiscal year. And there shall be included in the first annual estimate compiled after the provisions of this article shall be made applicable to a town, a sum or sums sufficient to pay all accounts, claims and demands against the town audited by the town board or board of town auditors or otherwise payable by the town for the fiscal year in which such resolution is adopted. After said annual estimate shall have been completed, it shall be entered in full upon the minutes of the town board. (*Added by L. 1916, ch. 396, in effect May 2, 1916.*)

§ 146. **Public hearing.**—Immediately after the annual estimate has been completed, the town board shall give notice of a public hearing at which any person favoring or objecting to said estimate or any part or item thereof will be heard. Such hearing shall be given upon ten days' notice. The notice shall specify the time and place where the hearing is to be held and the purpose thereof and it shall be stated therein that the annual estimate has been compiled by the town board and is on file in the office of the town clerk where any person interested therein may examine the same. Copies of such notice shall be posted in six conspicuous public places in the town, and published twice in not more than four newspapers published, having general circulation within the town, if the town board shall so determine, such posting and first publication to be at least ten days before the date of such public hearing. At the time and place in such notice mentioned, the town board shall convene and review the said estimate. At such hearing, taxpayers may be heard in favor or against the estimate as compiled or for or against any item therein contained. After such hearing and within ten days, the town board shall adopt such estimate as so originally compiled or shall diminish or reject any items therein contained and adopt said estimate as so amended. It shall have the power to diminish or reject any item contained in the estimate as originally compiled except those relating to salaries, the indebtedness of the town or the estimated revenues, but it shall not have the power to increase any estimated appropriation for expenditures except the estimate for highways which the board may increase or reduce any of the items contained therein as prescribed by section ninety-one of the highway law. Thereupon, the estimate, as adopted shall be entered in detail in the minutes of the proceedings of the town board. (*Added by L. 1916, ch. 396, in effect May 2, 1916.*)

§ 147. **Annual appropriations.**—When the town board shall have adopted the annual estimate originally compiled by it or said estimate as amended, after public hearing, the several sums estimated for expenditures therein shall be and become appropriated in the amounts and for the several departments, offices and purposes therein specified for the said fiscal year. The several sums therein enumerated as estimated revenues and the moneys necessary to be raised by tax in addition thereto, to pay the expenses of conducting the business of the town and for the purposes contemplated by this chapter and otherwise by law, shall be and become applicable in the amount therein named for the purpose of meeting said appropriations. In case the revenues received by the town exceed the amount of such estimated revenues named in said annual estimate, or in case there remain any unexpended balances of appropriations made for the support of the town government or for any other purpose, then such surplus revenues or such unexpended balances, or both, shall, except as otherwise provided by law, remain upon deposit and be included as a part of the estimated reve-

L. 1916, ch. 396.

Special provisions as to certain towns.

§§ 148-149a.

nues for the succeeding year, except that the town board may by a vote of two-thirds of its members at a regular or special meeting regularly convened, determine to apply such surplus revenues or unexpended balances, excepting those of the highway fund, toward and in addition to the funds appropriated as aforesaid and in such manner as in the judgment of two-thirds of the members of the town board may be most beneficial to the town. (*Added by L. 1916, ch. 396, in effect May 2, 1916.*)

§ 148. **Tax budget.**—The amount of estimated expenditures contained in the annual estimate adopted by the town board less the amount of estimated revenues applicable to the payment thereof and the amount of all judgments payable prior to the tax levy, shall constitute the tax budget. The town clerk shall make and certify in duplicate, a transcript of the minutes of the proceedings of the town board upon the adoption of the estimate, including the estimate in detail, and shall deliver one copy thereof to the supervisor of the town to be by him laid before the board of supervisors for the purpose of levying the annual tax and transmitting the other copy thereof to the clerk of the board of supervisors of the county, who shall cause the same to be printed in the proceedings of the board of supervisors. The board of supervisors of the county in which the town is situated shall levy and cause to be raised the amount specified in said annual estimate to be levied by tax, and the amount shall be levied, assessed and raised by tax upon the real and personal property liable to taxation in the town at the time and in the manner provided by law. (*Added by L. 1916, ch. 396, in effect May 2, 1916.*)

§ 149. **Temporary loans.**—In the interval, after the adoption of said annual estimate and the commencement of the fiscal year but before the revenues are received, the town board shall have the power to borrow money for any of the purposes for which funds are appropriated within the amounts appropriated therefor for the fiscal year in anticipation of the receipt of the said taxes and revenues applicable to such purposes. The town board may provide for the issue of certificates of indebtedness or revenue bonds to be signed by the supervisor and countersigned by the town clerk for such purposes. Such certificates or bonds, together with the interest thereon to date of maturity, shall be paid out of the moneys received on account of taxes and revenues applicable to such purposes and shall in no case be made to run for more than sixteen months. (*Added by L. 1916, ch. 396, in effect May 2, 1916.*)

§ 149-a. **Contracts and expenditures prohibited.**—No officer, board or department shall during any fiscal year expend or contract to be expended any money or incur any liability or enter into any contract which by its terms involves the expenditure of money for any purpose, unless provisions therefor shall have been made in the annual estimate or pursuant to section one hundred and forty-seven of this chapter, and in no case in excess of

the amounts appropriated in said estimate as adopted by the town board or pursuant to section one hundred and forty-seven aforesaid for such officer, board, department or purpose for such fiscal year. Any contract, verbal or written, made in violation of this section, shall be null and void as to the town and no money belonging to the town shall be paid thereon, provided, however, that nothing herein contained shall prevent the making of contracts for special district purposes as may now or hereafter be provided by law for periods exceeding one year, nor be held to prohibit the proper officers of the town from expending such sums or incurring such debts as may be actually necessary to prevent the spread of or to suppress any contagious or infectious diseases or any epidemic in the town, in addition to the amount appropriated for such purpose. (*Added by L. 1916, ch. 396, in effect May 2, 1916.*)

§ 149-b. **Penalties for violation of preceding action.**—Any officer or member of any board or department of any such town wilfully violating any of the provisions of the preceding section shall be guilty of a misdemeanor. (*Added by L. 1916, ch. 396, in effect May 2, 1916.*)

§ 149-c. **Duties of supervisor.**—The supervisor of any such town shall demand, collect, receive and have the care and custody of, and shall disburse all moneys belonging to or due the town from every source, except as otherwise provided by law. All moneys of the town received by the supervisor shall be deposited by him in such bank, banks or trust companies as shall be designated by the town board for such purpose. The interest on all deposits shall be the property of the town and shall be accounted for and credited to the proper fund. No money shall be drawn from a town depositary except on checks or drafts signed by the supervisor and made payable to the person entitled to receive the same. In addition to the several fund accounts required to be kept, the supervisor shall keep in his records a separate account with every appropriation for which funds are appropriated or raised by tax, and in every check or draft drawn by him he shall state particularly against which fund it is drawn and the appropriate amount chargeable therewith. He shall at no time permit any fund or any appropriation account to be overdrawn nor draw upon one fund or appropriation account to pay a claim chargeable to another. No money shall be paid out by him except upon the warrant, order or draft of the town board, or of the board of town auditors if there be such board in the town, except payments out of the town highway fund, shall be made by the supervisor upon the order of the town superintendent of highways, and that the supervisor may pay the principal and interest of funded debts and temporary loans, lawfully issued, without prior audit. The supervisor shall render to the town board at the end of each month a detailed statement of all money received and paid out by him for such month, and file a copy thereof in the office of the town clerk and with the

L. 1916, ch. 396.

Special provisions as to certain towns.

§ 149d.

board of town auditors if the town has such a board. (*Added by L. 1916, ch. 396, in effect May 2, 1916.*)

§ 149-d. **Claims against town.**—No claim against the town, except for a fixed salary, for the principal or interest on a bonded or funded debt or other loan or for the regular or stated compensation of officers or employees of the town, shall be paid unless an itemized claim therefor, verified by or on behalf of the claimant, in such form as the town board or board of town auditors shall prescribe, and approved by the officer whose action gave rise or origin to the claim, shall have been presented to the town board, or board of town auditors if one exists in the town, and shall have been audited and allowed by it except the form of claim for highway purposes shall be prescribed by the state highway commission and paid as provided by sections one hundred and five and one hundred and six of the highway law. If there be a board of town auditors in such town, the town clerk shall be and act as clerk of that board. He shall cause each claim presented to the town board or to the board of town auditors for audit to be numbered consecutively, and the number, date of presentation, name of claimant and a brief statement of the character of each claim to be entered in a book kept for such purpose, which shall at all times during office hours be so placed as to be convenient for and open to public inspection. No claim shall be audited or paid by the town board or board of town auditors until five days have elapsed after its presentation to the town clerk, and the town board or board of town auditors shall not be required to audit any claim until thirty days after the expiration of such period of five days. The town board or board of town auditors is authorized in considering a claim to require any person presenting the same for audit to be sworn before it or any member thereof, relative to the justness and accuracy of such claim, and to take evidence and examine the witnesses in reference to the claim, and for that purpose subpoenas for the attendance of witnesses may be issued by said board, except as otherwise provided by law. When a claim has been finally audited by the town board the town clerk or if the audit be made by the board of town auditors the chairman of said board or the town clerk shall endorse thereon or attach thereto a certificate of such audit and the same shall thereupon be filed in and remain a public record in the town clerk's office. The town clerk shall also prepare a warrant, order, draft or certificate of audit to be signed by a majority of the members of the town board or the board of town auditors and to be countersigned by him stating the fact of such audit, the number of the claim, the name of the claimant, the amount allowed and the fund and appropriation account chargeable therewith and such other information as may be deemed necessary or essential, directed to the supervisor of the town, authorizing and directing him to pay to the claimant the amount allowed upon his claim. No fund and no appropriation account shall be overdrawn nor shall any warrant be drawn against

one fund or appropriation account to pay a claim chargeable to another fund or appropriation account. It shall be the duty of the town clerk to keep a separate account with each appropriation for expenditure for which funds are appropriated or raised by tax, in such manner as the town board or board of town auditors and the comptroller of the state of New York may direct and determine.

For all his services rendered to or for the town, under or pursuant to the terms of this chapter, the town clerk shall receive an annual salary to be fixed by the town board of the town in lieu of all other compensation or fees which may now or hereafter be provided by law to be paid by the town for such services. (*Added by L. 1916, ch. 396, in effect May 2, 1916.*)

§ 149-e. **Saving clause.**—Nothing contained in this article shall be construed to alter or change the method or plan of determining the sum to be levied upon the special water, light, sewer, fire and other special districts, if any, nor the method of certifying such sums for the purpose of causing amounts to be inserted in the annual tax levy. All matter pertaining to the finances of such special districts shall be handled and transacted in the manner which may now or hereafter be provided by law. The provisions of the state highway law shall be carried out with the same force and effect irrespective of anything mentioned in this article. Nothing contained in this article shall be construed to repeal any statute of the state or lawful resolution of the board of supervisors of the county in which the town is situated, or of the town board, or rule or regulation of the board of health of the town, not inconsistent with the provisions of this article, and the same shall remain in full force and effect, when not inconsistent with the provisions of this article, to be construed and operated in harmony with its provisions. (*Added by L. 1916, ch. 396, in effect May 2, 1916.*)

§ 154. **Meetings and compensation of town auditors.**—The board of town auditors, or town board where no regular town board of audit has been chosen, in a town having a population of four thousand and upwards, may meet quarterly in each year on the first Mondays of February, May, August and November, for the purpose of auditing, allowing or rejecting all charges, claims and demands against the town. Each town auditor shall be entitled to receive for his services three dollars for each day, not exceeding in the aggregate twelve days in any one year, except in towns having a population of twelve thousand and upwards, in which towns each of such town auditors shall be entitled to receive for his services three dollars for each day, but not to exceed thirty days in any one year and except that in towns having a population of eighteen thousand and upwards, in which towns each of such town auditors shall be entitled to receive for his services such compensation as shall be fixed by the town board of such town, and not less than three nor more than five dollars for each day, but not to exceed sixty days in any one year and except that in towns having

L. 1916, ch. 593.

Sewer districts.

§§ 170, 246.

a population of forty thousand and upwards, in which towns each of such town auditors shall be entitled to receive for his services not less than three nor more than five dollars for each day, but not to exceed eighty days in any one year, actually and necessarily devoted by him to the service of the town, in the duties of said office. (*Amended by L. 1910, ch. 24, L. 1912, chs. 72, 258, L. 1913, ch. 17, L. 1915, ch. 431, and L. 1916, ch. 100, in effect Mch. 30, 1916.*)

§ 170. **Town charges.**—*Subd. 8, added by L. 1916, ch. 158, in effect Apr. 7, 1916, as follows:*

8. Actual expenses necessarily incurred by the supervisor of a town in the forest preserve, when authorized by resolution of the town board, in connection with the distribution of fish and game birds furnished by the conservation department of the state or by the federal government, not exceeding fifty dollars in any one year.

§ 246. **Constructing laterals in such districts.**—The board of sewer commissioners may in any town where a sewer district has been laid out and established as hereinbefore set forth, construct one or more laterals upon one or more streets within the sewer district as established, from time to time, entirely at the expense of the owners of the land fronting on said street, streets or portions thereof whereupon said lateral or laterals are constructed, provided a petition therefor be presented to the board of sewer commissioners signed by at least a majority of the resident owners of real property fronting on said street, streets or portions thereof whereupon it is proposed to lay and construct said lateral or laterals. The board of sewer commissioners shall upon the receipt of a petition as aforesaid give a public hearing thereon to all persons interested on a notice of at least ten days, which notice shall specify the time and place said hearing shall be held and shall be served upon the owners of the land fronting upon said street, streets or portions thereof set forth and described in said petition, by mailing the same to their last known respective addresses or by publishing the same once each week for two weeks in a newspaper which circulates in said district, or by either or any of said methods. If the board of sewer commissioners shall act favorably upon said petition, they shall by resolution direct that suitable plans be prepared, showing the location of such lateral or laterals and such street, streets or portions thereof it is proposed to sewer thereby, giving the dimensions of the pipes proposed to be laid, the location of the manholes and flush tanks, and showing where the same are to be connected with the sewer system within said district, and if there be a lateral or portion thereof upon such street, streets or portions, said commissioners are hereby given power and authority to repair or enlarge the same so as to conform as near as possible with the lateral to be constructed. (*Added by L. 1913, ch. 72, and amended by L. 1916, ch. 593, in effect May 18, 1916.*)

§ 261. **Petition.**—No such contract shall be made unless a petition for such lighting, signed by a majority of the taxpayers of such lamp or lighting district, shall be filed with the town clerk of said town thirty days before the contract is made, but in the counties of Nassau and Westchester no such contract shall be made unless the petition for such lighting is signed by a majority of the resident taxpayers in such lamp or lighting district, unless it be a renewal or extension of such a contract. In case such proposed lamp or lighting district lies in two or more adjoining towns, a petition signed by a majority of the taxpayers of such lighting district may be filed with the clerk of any such towns, and a copy of such petition and its signatures, certified to be such by the clerk of the town with whom the original petition is filed shall thereupon be filed with the town clerk of each other such town, and such petition shall not be deemed filed within this section until so filed with the clerk of each such town. A joint meeting of the town boards of such towns for the purpose of transacting any business of such joint lamp or lighting district, shall be held at any time upon written request of the supervisor of any such town to the clerk of each such town. It shall be lawful, however, for the town board of each town, a part of which is included in a joint lamp or lighting district so established, to transact all business thereof in separate session, except that the establishment of the district and the adoption of an initial contract for lighting, shall be done in joint meeting as provided in section two hundred and sixty. For the purposes of such joint action in separate session a majority vote at a meeting of each such town board, upon the same resolution, shall be necessary. The town clerk of each such town shall file a copy of such minutes of separate meetings as refer to such lighting district with the town clerk of each other town, a part of which is included in such joint lighting district, and the action of the several town boards shall thereupon become effective for such joint district. (*Amended by L. 1910, ch. 671, and L. 1916, ch. 99, in effect Mch. 30, 1916.*)

§ 261-a. **Consolidation of lighting districts.**—Two or more adjoining lighting districts in the same town may be combined in a single lighting district by a resolution of the town board of said town, and two or more adjoining lighting districts, any one of which lies in two or more adjoining towns, may be combined in a single lighting district by resolution of the town boards of said towns in joint session. In case the existing contracts for lighting different parts of such combined district are, by the terms thereof, to expire at different times, no renewal of any such contract shall be for a period longer than the unexpired portion of the term of the other such contract, if there be but two, or in case there be more than two such contracts, for a period longer than the unexpired portion of that one of such contracts which has the longest time to run. (*Added by L. 1916, ch. 99, in effect Mch. 30, 1916.*)

L. 1916, ch. 226.

Lighting districts; water companies.

§§ 262a, 313.

§ 262-a. **Extension of existing districts.**—Any existing lighting district may be extended by resolution of the town board of the town in which such district is situated, or by resolution in joint session of the town boards of the several towns in which such district is situated, so as to include therein any part of such town or towns, adjoining such district, upon the written petition of a majority of the owners of the real property to be included in such proposed extension, duly filed with the clerk of the town in which such district is situated; or if such district lies in two or more adjoining towns, with the clerk of any one of such towns. A lighting district may be repeatedly enlarged and extended in accordance with the provisions of this section. No contract for lighting such extension shall be made for a period of time longer than the unexpired portion of the term of the existing contract for lighting said district; or, in case there shall be at the time of such extension more than one existing contract for lighting said district, for a period longer than the unexpired portion of that one of such contracts which has the longest time to run. (*Added by L. 1916, ch. 99, in effect Mch. 30, 1916.*)

§ 313. **Appropriations for fire company.**—The electors of any water district, highway district, town fire district or water supply district, in which any town fire company shall have their headquarters, at a special meeting lawfully called by the town clerk, who is hereby authorized to call such special meeting, may vote, by ballot, a sum of money, not exceeding four thousand dollars, for the purchase of a fire engine and apparatus for the extinguishment of fires, and for the purchase or lease or other acquisition of suitable buildings and grounds for keeping and storing such fire engine and apparatus for the extinguishment of fires, and other property of said water district, highway district or water supply district, and an additional sum for the maintenance and operation of the engines, apparatus and buildings and of said fire company or companies within such district for the ensuing year. And whenever said electors shall so vote said money for the purchase of a fire engine and apparatus for the extinguishment of fires, and for the purchase or lease or other acquisition of suitable buildings and grounds for keeping and storing such fire engine and apparatus for the extinguishment of fires, and other property of said water district, highway district, town fire district or water supply district, the water commissioners in water districts and the town boards in highway and water supply districts or town fire districts where no board of town fire commissioners has been established, and the board of town fire commissioners in town fire districts may contract for and purchase for such district a good and sufficient fire engine and apparatus for the extinguishment of fires, and may contract for and purchase or lease or otherwise acquire for such district suitable buildings and grounds for keeping and storing such fire engine and apparatus for the extinguishment of fires, and other property of said district at a price not to exceed the sum so voted

§§ 314-316.

Fire companies; fire districts.

L. 1916, ch. 226.

therefor, which engine and apparatus for the extinguishment of fires, and buildings and grounds, shall be the property of said water district, highway district, town fire district or water supply district, but may be used and cared for by such fire company or companies under the direction and control of the water commissioners in water districts and the town board in highway and water supply districts and in town fire districts where no board of town fire commissioners has been established; all of which boards shall in such cases respectively have such powers and duties as are hereafter in this article provided for boards of town fire commissioners. (*Amended by L. 1910, ch. 408, L. 1912, ch. 238, and L. 1916, ch. 226, in effect Apr. 27, 1916.*)

§ 314. **Assessments for expense of maintaining fire company.**—The purchase price of said fire engine and apparatus or other apparatus for the extinguishment of fires, and buildings and grounds, and the expense of maintaining said fire engine and apparatus for the extinguishment of fires and other property and apparatus and of maintaining said fire company or companies shall be assessed and levied upon the property of said district and collected in the same manner as other town charges are assessed, levied and collected, except that in the case of a water district, highway district or water supply district the amount thereof shall be put in a separate column upon the tax-roll, and the board of supervisors of the county shall cause the sum as certified by the town board, to be levied upon the taxable property of such water district, highway district or water supply district. The funds so collected shall be paid by the collector to the supervisor of the town who shall apply the same to the expenses incurred pursuant to the provisions of this article, by paying the same on the order of the board authorized by the provisions of this article to purchase, direct and control said engines, apparatus, buildings and grounds. (*Amended by L. 1910, ch. 408, L. 1912, ch. 238, and L. 1916, ch. 226, in effect Apr. 27, 1916.*)

§ 315. **Ordinances.**—The board of water commissioners in any water district, established pursuant to this chapter, and the town board in any highway district, town fire district or water supply district may adopt ordinances, not inconsistent with law, relating to fire protection, the prevention and extinguishment of fires and conduct thereat within said district, and to regulate or prevent the discharge of fireworks and firearms and to regulate the use of inflammable materials and the storing, sale and transportation of gunpowder and other explosives within said district, and may enforce the observance thereof by the imposition of penalties. (*Added by L. 1910, ch. 408, and amended by L. 1912, ch. 238, and L. 1916, ch. 226, in effect Apr. 17, 1916.*)

§ 316. **Town fire districts; boards of town fire commissioners.**—The town board of a town may, with the consent of the proper board or officers

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Fire companies; fire districts.

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of any water supply district, or highway district, or fire district, maintain fire apparatuses, and the boards of trustees, or other like bodies performing such duties, of all incorporated cities or villages wholly within such town, establish a town fire district, the boundaries of which shall be the same as the boundaries of the town, and transfer to said town fire district all property held by the town for the purpose of extinguishment of fires. The town board of any town where such town fire district is established, may, on like consent, by resolution establish a board of town fire commissioners, consisting of three members, and shall appoint the first members of such board for the term of one, two and three years, respectively; and shall thereafter appoint successors to such members for the term of three years, and shall fill vacancies in said board of town fire commissioners. (*Added by L. 1916, ch. 226, in effect Apr. 17, 1916.*)

§ 317. **Powers and duties of boards of town fire commissioners.**—Such board of town fire commissioners shall have the care, custody and control of all property belonging to the town fire district; may, on the conditions prescribed in this article, purchase fire engines, and other apparatus for the extinguishment of fires within the town, purchase, lease, otherwise acquire and maintain suitable and necessary buildings and grounds for the keeping and storing thereof; may construct and maintain reservoirs and cisterns and supply them with water for use at fires; shall have the exclusive power to organize a town fire company or companies by appointment in the manner provided in this article for appointment by the town board, and to fill vacancies in such company or companies; may adopt rules for the admission, suspension, removal and discipline of the members and officers of such company or companies; may prescribe their respective powers and duties and fix their compensation; may appoint persons other than members or officers of the company or companies to take charge of and operate the property of the fire district, and may fix their compensation; shall have the control and supervision of such members, officers and employees, may direct their conduct at fires and prescribe methods for extinguishing fires; and may inquire into the cause and origin of fires occurring in the town and may take testimony in relation thereto; and may expend for the maintenance and operation of the engines, and other apparatus for the extinguishment of fires, and other property and for maintaining said fire company or companies a sum in each year, not exceeding the sum voted for such purposes as prescribed in this article. (*Added by L. 1916, ch. 226, in effect Apr. 17, 1916.*)

ARTICLE XVII—b.

(Article added by L. 1916, ch. 54, in effect Mch. 20, 1916.)

PARK DISTRICTS IN TOWNS WITHIN CERTAIN COUNTIES ADJOINING CITIES OF THE FIRST CLASS.

- Section 349. Town board may establish park districts; petition.
- 349-a. Action by town board; appointment of commissioners.
 - 349-b. Oaths and undertakings of commissioners.
 - 349-c. Board of park commissioners a body corporate; name; title to property.
 - 349-d. Acquisition and improvement of property.
 - 349-e. Moneys for acquisition of property to be raised by town bonds.
 - 349-f. Issue and sale of town bonds.
 - 349-g. Management and control of parks.
 - 349-h. Contracts with incorporated villages.
 - 349-i. Tax for payment of bonds and interest and expenses of maintenance, operation and improvement.
 - 349-j. Annual report of park commissioners.
 - 349-k. Use of park property.
 - 349-l. Rules and regulations; enforcement thereof.

§ 349. Town board may establish park districts; petition.—In counties adjacent to cities of the first class, exceeding two hundred square miles in area, and having a population of less than two hundred and fifty thousand persons according to the last preceding census the town board of any town, on the petition filed in the office of the town clerk, of owners of real property in a proposed district, representing more than one-half in assessed value of the taxable real property therein, as appears by the last preceding completed assessment-roll, may create and establish a park district outside an incorporated village or city. The petition must describe the proposed district, and the property proposed to be acquired for park purposes, and state the maximum amount proposed to be expended in the acquisition of such property. Each petitioner shall state opposite his name the assessed valuation of the real property owned by him in such district, according to the last preceding completed assessment-roll. (*Added by L. 1916, ch. 54, in effect Mch. 20, 1916.*)

§ 349-a. Action by town board; appointment of commissioners.—If the town board is satisfied that the petitioners are owners of real property in the proposed district and own more than one-half in assessed value of the taxable real property therein, they shall make an order creating and establishing such park district and appointing three persons, who shall be owners of real property therein, as park commissioners. The order shall be filed with the town clerk and recorded in the minute book of such board. Such park commissioners first appointed shall hold office for terms of one, two and three years, respectively, to be determined by the town board in making the appointments. The town board shall thereafter appoint each

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Park districts in certain towns.

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year one park commissioner who shall be an owner of real property in such district and who shall hold office for a term of three years, and the town board shall fill any vacancies that may occur. Such park commissioners shall receive no pay for their services. (*Added by L. 1916, ch. 54, in effect Mch. 20, 1916.*)

§ 349-b. Oaths and undertakings of commissioners.—Each commissioner before entering on the duties of his office shall take the constitutional oath of office and execute to the town and file with the town clerk an official undertaking in such sum and with such sureties as the town board shall direct. The town board may at any time require any such commissioner to file a new official undertaking for such sum and with such sureties as the board may direct. (*Added by L. 1916, ch. 54, in effect Mch. 20, 1916.*)

§ 349-c. Board of park commissioners a body corporate; name; title to property.—In the order establishing such district, the town board shall designate such district as park district of the town of and the park commissioners so appointed by the town board shall constitute the board of park commissioners of such district. Such board is hereby created a body corporate and shall have the name and style of the board of park commissioners of (adding the designation aforesaid), and shall have the powers of a municipal corporation. The act of a majority of the park commissioners shall be the act of such board. The title to all property acquired pursuant to this article shall be taken in the name of, and shall vest in, the board of park commissioners of such district in its corporate capacity. (*Added by L. 1916, ch. 54, in effect Mch. 20, 1916.*)

§ 349-d. Acquisition and improvement of property.—The board of park commissioners shall proceed to acquire the property described in the petition for the establishment of such park district and may improve the same and erect or cause to be erected thereon such buildings and structures as may be proper for the use thereof as a park. (*Added by L. 1916, ch. 54, in effect Mch. 20, 1916.*)

§ 349-e. Moneys for acquisition of property to be raised by town bonds.—Before taking title to such real property, the board of park commissioners shall file with the town board a written statement specifying the amount of money needed therefor, and it shall be the duty of the town board to raise the amount of money specified in such statement by the issue and sale of bonds as provided in this article. (*Added by L. 1916, ch. 54, in effect Mch. 20, 1916.*)

§ 349-f. Issue and sale of town bonds.—Town bonds issued under authority of and conferred by this article shall be signed by the supervisor and attested by the town clerk. Such bonds shall become due within forty years from the date of issue and unless the whole amount of the indebted-

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ness represented thereby is to be paid within ten years from their date they shall be so issued as to provide for the payment of the indebtedness serially in equal annual instalments, the first of which shall be payable not more than ten years from their date. Such bonds shall bear interest at a rate not exceeding five per centum per annum, and shall be sold for not less than their par value. They shall be sold on sealed proposals or at public auction upon notice published at least once in a newspaper printed in the town, if any, and also in such other papers as may be designated by the town board at least ten days before the sale to the person who will take such bonds at the lowest rate of interest. Such bonds shall be consecutively numbered from one to the highest number issued and the town clerk shall keep a record of the number of each bond, its date, amount, rate of interest, when and where payable, and the purchaser thereof, or the person to whom it is issued. Such bonds shall be a charge upon the town, and shall be collected from the property within the park district. (*Added by L. 1916, ch. 54, in effect Mch. 20, 1916.*)

§ 349-g. **Management and control of parks.**—The board of park commissioners shall have entire charge, control, and management of the establishment, maintenance, operation and improvement of such park, and may employ such persons and expend such amounts of money as may be necessary for or contribute to the use, convenience and enjoyment of such park by the inhabitants of such park district, and may in its discretion grant licenses and privileges for any use of such park and park property which conduces thereto. (*Added by L. 1916, ch. 54, in effect Mch. 20, 1916.*)

§ 349-h. **Contracts with incorporated villages.**—The board of park commissioners may at any time and from time to time make contracts with an incorporated village or villages for the payment to such board by such village of amounts, to be applied toward the maintenance or improvement of such park, in consideration whereof the inhabitants of such incorporated village or villages shall have the free use of such park; and the board of trustees of such village or villages is hereby authorized to make such contract on behalf of such village. (*Added by L. 1916, ch. 54, in effect Mch. 20, 1916.*)

§ 349-i. **Tax for payment of bonds and interest and expenses of maintenance, operation and improvement.**—The board of park commissioners shall on or before the first day of November in each year, prepare an itemized estimate of the necessary expenses of maintaining, operating and improving such park for the next ensuing calendar year, including the amount to be paid for the principal and interest of the bonds. The town board may reduce or strike out any item contained in such estimate, except items for payment of principal of bonds and interest thereon, and after considering such estimate shall transmit the same to the board of supervisors of the county. The amount specified in such estimate less the reductions, if

L. 1916, ch. 91.

Collection of ashes and garbage.

§§ 349j-349l, 477a.

any, made by the town board shall be levied and collected upon the taxable property in such park district in the same manner, at the same time and by the same officers as the town taxes, charges or expenses of such town are levied and collected, and the same shall be paid over to the board of park commissioners and by them applied for the purposes stated in their estimate. (*Added by L. 1916, ch. 54, in effect Mch. 20, 1916.*)

§ 349-j. **Annual report of park commissioners.**—The board of park commissioners shall during the month of January in each year, file with the town board a detailed report of its receipts and expenditures during the preceding calendar year. (*Added by L. 1916, ch. 54, in effect Mch. 20, 1916.*)

§ 349-k. **Use of park property.**—The free use of such park may be limited by the board of park commissioners in its discretion to the inhabitants of such park district. (*Added by L. 1916, ch. 54, in effect Mch. 20, 1916.*)

§ 349-l. **Rules and regulations; enforcement thereof.**—The board of park commissioners shall have power to establish and enforce general rules and regulations for the government and protection of the park and of all property in charge of such board or under its control. No such rule or regulation adopted by the board of park commissioners shall become valid and effectual until a copy of such rule or regulation duly certified to be a correct copy by such board be filed with the town clerk. Any person violating any rule or regulation relating to the park or other property mentioned in this article shall be guilty of a misdemeanor and shall, on conviction before a justice of the peace, be punished by a fine not exceeding fifty dollars, or in default of payment of such fine, by imprisonment not exceeding thirty days. (*Added by L. 1916, ch. 54, in effect Mch. 20, 1916.*)

§ 477-a. **Collection of ashes and disposition of garbage in certain towns.**—The said board, upon a petition of the owners of the real estate in said town, or the owners of the real estate in the part of said town in such petition described, may contract with persons or corporations for the collection and disposition of all ashes, refuse or other indestructible matter, swill or garbage, in said town or in the part thereof described in such petition, but the expense thereof shall be assessed upon and collected from the several lots or parcels of land described in such petition. No such petition shall be of any force or effect, nor shall such petition be acted upon by such board, unless the same shall be signed by the resident owners representing not less than one-half of the taxable real estate situated in the district described in such petition. (*Added by L. 1916, ch. 91, in effect Mch. 30, 1916.*)

ARTICLE XXIVA.

(Article added by L. 1916, ch. 553, in effect Jan. 1, 1917.)

RECEIVER OF TAXES IN CERTAIN TOWNS.

Section 513. Office of receiver of taxes and assessments created; term of office; compensation.

514. Powers and duties of receiver.

515. Office hours.

516. Election; term of office; salary; bond; oath of office.

517. Warrant for collection of taxes.

518. Certain offices abolished.

§ 513. Office of receiver of taxes and assessments created; term of office; compensation.—There shall be in and for each town which contains a village adjoining a city of the first class situated within a county having a population of four hundred thousand or more, according to the last state enumeration, except counties adjoining a city of over one million inhabitants, a receiver of taxes and assessments. The term of office of such receiver shall be four years. Such office shall be filled by the electors of the town, in the same manner as other elective town offices, at the times hereinafter provided. The salary for such office shall be fixed by the town board. (*Added by L. 1916, ch. 553, in effect Jan. 1, 1917.*)

§ 514. Powers and duties of receiver.—The receiver of taxes and assessments shall be a resident of such town and shall hold no other public office except receiver of taxes and assessments of a village in such town and shall have and possess, and shall exercise in the manner and within the time prescribed by law all the rights, powers, authority and jurisdiction possessed and exercised by the collector of taxes and the collector of school taxes in said town, and shall be subject to all of the duties of such officers. It shall be the duty of such receiver to receive and collect all state, county, town and school taxes and assessments that may be levied in such town, including excise moneys, water rates, license moneys, and all other moneys provided by law to be paid to the supervisor or collector or school collector, or to any other town officer. All fees collected by him upon any tax or assessment heretofore paid to the supervisor, collector, or school district collector shall belong to the town and shall be paid into the general town fund. Such receiver shall enter daily in a suitable book or books the sum of money received daily, the names of the persons from whom received, and the particular tax or assessment, subject or department for which such sums were paid, and the interest, penalty or fee, if any, paid thereon, and such book or books shall be public records and shall be open during office hours to public inspection to any taxpayer in such town. Within twenty-four hours after receiving the same, he shall deposit all sums of money received and collected by him in such bank or banks as may be designated from time to time by the town board. All moneys deposited by him so

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Receiver of taxes in certain towns.

§§ 515-517.

belonging to the town shall be paid out and disbursed by him on his check as such receiver upon proper order of the town board. (*Added by L. 1916, ch. 553, in effect Jan. 1, 1917.*)

§ 515. **Office hours.**—Such receiver shall keep his office in such town, and his office shall be open each and every day, Sundays and all public holidays excepted, from nine o'clock in the morning until four o'clock in the afternoon. (*Added by L. 1916, ch. 553, in effect Jan. 1, 1917.*)

§ 516. **Election; term of office; salary; bond; oath of office.**—The receiver of taxes and assessments shall be elected for a full term at the next biennial election after this article takes effect and at the biennial election in every fourth year thereafter; and also at any intervening biennial election for an unexpired term to fill a vacancy occurring more than thirty days before such election. The full term of office of such receiver shall begin, or a receiver elected to fill a vacancy shall take office, on the first day of January succeeding his election, and such term shall end on the thirty-first day of December following the election at which his successor is required to be chosen. The salary of such receiver shall be raised and collected by tax as other town charges are raised and collected. In the event of a vacancy in such office by death, resignation or other cause, the town board shall fill the same, at a regular or special meeting called for that purpose, by an appointment expiring on the thirty-first day of December next succeeding the first biennial town meeting at which the office may be filled by election as hereinbefore provided; but nothing contained in this article or any other statute shall authorize an appointment by the town board to fill a vacancy in such office before the first day of January following the biennial town meeting first occurring after this article takes effect. Such board may at any regular or special meeting fix the amount of the bond to be given by such receiver, and such bond shall be subject to approval as to form and sufficiency of surety by said board. Such bond shall be conditioned on the faithful discharge of the duties of such receiver of taxes and assessments and shall be filed in the office of the town clerk and, in case of default shall inure to the benefit of the town, county and state. Such receiver after having been elected or appointed and before entering upon the discharge of the duties of his office shall take and subscribe and file in the office of the town clerk the constitutional oath of office. (*Added by L. 1916, ch. 553, in effect Jan. 1, 1917.*)

§ 517. **Warrant for collection of taxes.**—The board of supervisors of the county shall issue its warrant to such receiver of taxes and assessments for the collection of taxes in such town in the same manner as warrants are issued to collectors, and all other warrants or authorizations for the collection of taxes, assessments, or other moneys which, except for the provisions of this article, would be issued to some other officer, shall be issued to such receiver of taxes and assessments. (*Added by L. 1916, ch. 553, in effect Jan. 1, 1917.*)

§ 518. **Certain offices abolished.**—The office of collector and of school district collector in such towns are abolished from and after the beginning of the term of office of the first receiver of taxes under this article, and no such collector shall be chosen at any time to succeed the collector in office when the term of such receiver begins. Upon the taking of office by the first receiver of taxes and assessments as provided herein, the collector of the town and each school district collector shall surrender up and deliver to such receiver all assessment rolls, books, papers, writings and all other documents in his possession as such officer. All provisions of law applicable to town collectors or school district collectors and not inconsistent with the provisions of this article are hereby made applicable to such receiver and such receiver shall continue to collect all fees and penalties which such collectors, or either of them, would collect were it not for the provisions of this article. (*Added by L. 1916, ch. 553, in effect Jan. 1, 1917.*)

TRANSPORTATION CORPORATION LAW.

(L. 1909, ch. 219.)

§ 25. Additional persons and corporations subject to the public service commissions law.

Common carrier.—One who operates in a city a motor vehicle connected with a bus line, a stage route and a motor vehicle line or route, all of which are feeders, connections, inducements, advertisers, solicitors, aids to and a part of his system of carrying passengers for hire from said city to points beyond the corporate limits, is a common carrier within said city within the meaning of chapter 667 of the Laws of 1915. *Public Service Commission v. Hurtgan* (1915), 91 Misc. 432, 154 N. Y. Supp. 897.

A municipal license permitting the licensee to operate a jitney bus line within the municipality does not create a vested right in the licensee so as to exempt him from the operation of chapter 667 of the Laws of 1915, amending section 25 of the Transportation Corporations Law, subsequently enacted, which required persons operating such bus lines in cities to obtain a certificate of convenience and necessity from the Public Service Commission and subjects such line to reasonable regulations imposed by the Commission. In view of the fact that a jitney bus line uses the highways of a municipality and comes in competition with other vehicles carrying passengers for hire, the Legislature, in the exercise of its police powers, may subject such carriers to the jurisdiction of the Public Service Commission. Although said statute places only those bus lines charging a fare of fifteen cents or less under the jurisdiction of the Public Service Commission, there is no illegal discrimination against such carriers in violation of their constitutional rights. *Public Service Commission v. Booth* (1915), 170 App. Div. 590, 156 N. Y. Supp. 140.

Injunction.—One who operates a motor vehicle line within a city without the consent of the municipal authorities and without procuring a certificate from the public service commission as to the necessity and public convenience of such business violates the statute, and an injunction will be granted restraining him from operating his motor vehicles and carrying passengers for hire within said city. *Public Service Commission v. Hurtgan* (1915), 91 Misc. 432, 154 N. Y. Supp. 897.

§ 61. Powers.

Corporation dealing in natural gas; consent of municipal authorities.—Corporations, dealing in natural gas, organized under Transportation Corporations Law, are required to seek the consent of the municipal authorities, i.e., the town board; but, when organized under the Business Corporations Law, are required to seek the consent of the town superintendent. *Farnsworth v. Boro Oil & Gas Co.* (1915), 216 N. Y. 40, 43, affg. 155 App. Div. 79, 139 N. Y. Supp. 736.

A gas company, organized under the Business Corporations Law to deal in natural gas, which has obtained consent of the town board, on certain conditions, to lay pipes in the streets is estopped from denying the validity of a contract on ground of lack of power in town board to grant permission. *Farnsworth v. Boro Oil and Gas Co.* (1915), 216 N. Y. 40, affg. 155 App. Div. 79, 139 N. Y. Supp. 736.

The town board and not the commissioner or superintendent of highways constitutes the "municipal authorities," within the meaning of subdivision 2 of this section. *Niagara & Erie Power Co. v. Public Service Commission* (1916), 171 App. Div. 361, 156 N. Y. Supp. 879.

§ 62. Gas and electric light must be supplied on application.

Duty of gas company to install and exchange meters.—Where a gas company at

§§ 63, 103.

Transmission of dispatches.

the request of the owner of a building has installed a particular type of gas meter, it has performed its statutory duty under this section, and since there is no particular kind of meter prescribed by statute, the company at the request of a tenant is not required by law to change a prepayment meter theretofore installed by it for a black meter, without the payment of the reasonable costs of the change. *Public Service Commission v. Northern Union Gas Co.* (1915), 168 App. Div. 731, 154 N. Y. Supp. 649.

Refusal of electric company to furnish current; certificate as to sufficiency of customer's electric equipment; certificate of board of fire underwriters.—Although this section imposes a penalty upon electric lighting companies which refuse to furnish electricity to consumers as required by the statute, such duty is not unqualified, and an electric power company may make reasonable rules and regulations as to the sufficiency and safety of the equipment of the person applying for electric power. Thus, such company is justified in requiring an applicant for electric power in the city of New York to show the sufficiency and safety of the electric equipment in his building by obtaining a certificate to that effect from the board of fire underwriters, and may lawfully refuse to supply or continue electric current until such certificate is obtained without becoming subject to the statutory penalty. It is not unreasonable for an electric company to insist upon the production of a certificate of the board of fire underwriters, although the applicant for electricity is required to pay to the board a small fee for the certificate, for, *it seems*, that the electric company itself could charge him with the expense of examining his equipment by its own experts and hence may insist that the examination be made by the fire underwriters, although a fee is charged. *Tisner v. New York Edison Co.* (1915), 170 App. Div. 647, 156 N. Y. Supp. 28.

Extensions of gas mains for more than one hundred feet cannot be ordered under this section. *Pub. Serv. Com. Decision* (1915), 4 State Dep. Rep. 26.

§ 63. Deposit of money may be required.

Interest on all deposits at the legal rate is required to be paid by gas corporations. Provision should be made for the payment or crediting of interest at reasonable intervals, and each company should seek to locate all depositors whose accounts have been closed, in order that they may refund to them the balance of their deposits. *Pub. Serv. Com. Decision* (1915), 4 State Dep. Rep. 1.

§ 103. Transmission of dispatches.

Penalty for failure to transmit messages to other companies; unjustified refusal to furnish telephone service to subscriber.—The penalty prescribed in this section upon telephone companies for refusing to transmit messages received from and for other telephone companies and from and for individuals who have paid the usual charges has no reference to the unjustified act of a telephone company in suspending telephone service to a subscriber upon the ground that he had failed to pay the monthly telephone charges, although he had proved that all moneys due had in fact been paid. The relation of a subscriber to the telephone company is contractual and his remedy for the acts aforesaid is an action for breach of contract. *Rose v. New York Telephone Co.* (1915), 167 App. Div. 691, 152 N. Y. Supp. 827.

VETERINARY MEDICINE.

Licenses; Public Health L., § 219. .

VILLAGE LAW.

(L. 1909, ch. 64.)

§ 3. Proposition for incorporation and consent of property owners.

Petition to have boundaries of incorporated village extended; description of territory to be annexed must state boundaries with "common certainty."—Where a citizen of an incorporated village petitions the trustees of the village to submit to the electors thereof a proposition to extend the boundaries of the village, his right to have the petition granted depends upon whether the petition complies with the statute, which prescribes that the description of the territory to be incorporated shall "suitably" describe "such district with common certainty." Where such description leaves the exact boundaries doubtful and uncertain, the petition is defective and the petitioner may not compel the trustees to submit the proposition. *People ex rel. Underwood v. Village of Patchogue* (1916), 217 N. Y. 466, affg. 171 App. Div. 347, 156 N. Y. Supp. 1096.

ARTICLE III-a.

(Article added by L. 1916, ch. 555, in effect Jan. 1, 1917.)

RECEIVER OF TAXES IN CERTAIN VILLAGES.

Section 70. Office created; term of office; compensation.

- 71. Powers and duties of receiver.
- 72. Office hours.
- 73. Election; term of office; salary; bond; oath of office.
- 74. Warrant for collection of taxes.
- 75. Certain offices abolished.

§ 70. Office created; term of office; compensation.—In each village adjoining a city of the first class, situated within a county having a population of four hundred thousand or upwards, according to the last state enumeration, except in counties adjoining a city of over one million inhabitants, there shall be a receiver of taxes and assessments. The term of office of such receiver of taxes and assessments shall be four years. Such office shall be filled by the electors of the village, in the same manner as other elective offices of the village, at the times hereinafter provided. The salary shall be fixed by the board of trustees of such village. (*Added by L. 1916, ch. 555, in effect Jan. 1, 1916.*)

§ 71. Powers and duties of receiver.—The receiver of taxes and assessments shall be a resident of such village and shall have and possess and shall exercise in the manner and within the time prescribed by law all the rights, powers, authority and jurisdiction possessed and exercised by either the collector of taxes or the treasurer of such village, and shall be subject to all of the duties of each of said officers. It shall be the duty of such receiver to receive and collect all village taxes and assessments that may be levied in such village, including water rates, license moneys, and all other moneys provided by law to be paid to the treasurer or collector of such

village, or to the village trustees. All fees collected by him upon village taxes or assessments heretofore paid to the collector or to the treasurer shall belong to the village and shall be paid into the general village fund. Such receiver shall enter daily in a suitable book or books the sum of money received daily, the names of the persons from whom received, and the particular tax or assessment, subject or department for which such sums were paid, and the interest, penalty or fee, if any, paid thereon, and such book or books shall be public records and shall be open during office hours to public inspection to any taxpayer in such village. Within twenty-four hours after receiving the same he shall deposit all sums of money received by him belonging to the village in such bank or banks as may be designated from time to time by the trustees of such village. All moneys deposited by him so belonging to such village shall be paid out and disbursed by him on his check as such receiver upon proper order of the trustees. (*Added by L. 1916, ch. 555, in effect Jan. 1, 1916.*)

§ 72. **Office hours.**—Such receiver shall keep his office in said village, and such office shall be open each and every day, Sundays and all public holidays excepted, from nine o'clock in the morning until four o'clock in the afternoon. (*Added by L. 1916, ch. 555, in effect Jan. 1, 1916.*)

§ 73. **Election; term of office; salary; bond; oath of office.**—The receiver of taxes and assessments shall be elected for a full term at the next regular election of village officers occurring after this article takes effect and at such election in every fourth year thereafter; and also at the regular election of village officer in any year for an unexpired term to fill a vacancy occurring more than thirty days before such election. The full term of office of such receiver shall begin, or a receiver elected to fill a vacancy shall take office, on the first Monday succeeding his election, and such term shall end at the close of the day preceding the Monday following the election at which his successor is required to be chosen. The salary of such receiver shall be raised and collected by tax as other village charges are raised and collected. In the event of a vacancy in such office by death, resignation or other cause, the board of trustees shall fill the same, at a regular or special meeting called for that purpose, by an appointment expiring at the close of the day preceding the first Monday following the next regular election of village officers at which the office may be filled by election as hereinbefore provided; but nothing contained in this article or any other statute shall authorize an appointment by the board of trustees to fill a vacancy in such office before the first Monday following the regular election of village officers first occurring after this article takes effect. Such board of trustees may at any regular or special meeting fix the amount of the bond to be given by such receiver, and such bond shall be subject to approval as to form and sufficiency of surety by such board. Such bond shall be conditioned on the faithful discharge of the duties of such receiver of taxes and assessments and shall be filed in the office of the

L. 1916, ch. 36.

Powers of board of trustees.

§§ 74, 75, 89.

village clerk. Such receiver after having been elected or appointed and before entering upon the discharge of the duties of his office shall take and subscribe and file in the office of the village clerk the constitutional oath of office. (*Added by L. 1916, ch. 555, in effect Jan. 1, 1916.*)

§ 74. **Warrant for collection of taxes.**—The board of trustees of such village shall issue warrants or authorizations to such receiver for the collection of all taxes and assessments imposed, levied or assessed by them in such village and for the collection of all moneys due or to become due to them as trustees of such village, and all other warrants or authorizations for the collection of taxes, assessments, or other moneys which, were it not for the provisions of this article, would be issued to some other officer, shall be issued to the receiver of taxes and assessments. (*Added by L. 1916, ch. 555, in effect Jan. 1, 1916.*)

§ 75. **Certain offices abolished.**—The offices of collector and treasurer of such village are abolished from and after the beginning of the term of office of the first receiver of taxes under this article, and no collector nor treasurer shall be chosen at any time to succeed the collector or treasurer in office when the term of such receiver begins. Upon the taking of office by the first receiver of taxes and assessments, as provided by this article, the collector of the village and the treasurer of the village shall surrender up and deliver to said receiver all assessment rolls, books, papers, writings and all other documents in his possession as such officer. All provisions of law applicable to village collectors or treasurers and not inconsistent with this act, are hereby made applicable to the office of receiver of taxes and assessments and such receiver shall continue to collect all fees and penalties which such collector or treasurer would collect were it not for this article. (*Added by L. 1916, ch. 555, in effect Jan. 1, 1916.*)

§ 89. **General powers of the board of trustees.**—*Subd. 15, as amended by L. 1910, ch. 454, amended by L. 1916, ch. 36, in effect Mch. 10, 1916, as follows:*

15. **Drains.** May construct drains and culverts and regulate water courses, ponds and watering places within the village, and power and authority is hereby conferred upon the board of trustees of a village, in the name of the village, to acquire title to real property for public use, or an easement for a right of way therein necessary therefor, whether such real property, or an easement for a right of way therein is located within or without such village, by purchase, or if unable to agree with the owners for the purchase of such real property or an easement for a right of way therein, the board of trustees may acquire such real property or easement for a right of way therein, by condemnation as provided by and under chapter twenty-three, title one of the code of civil procedure, for any of the purposes mentioned in this subdivision and to protect the property within the village from floods, freshets and high water. The board of

trustees may cause such construction or regulation, as the case may be, with respect to drains, culverts, water courses, ponds and watering places to be done wholly at the expense of the village, or of the owners of the property benefited, or partly at the expense of each; but such construction or regulation shall not be wholly at the expense of the owners of the property benefited, or partly at the expense of such owners and partly at the expense of the village, except as provided by the provisions, so far as applicable, of sections two hundred and sixty-two to two hundred and seventy-six, both inclusive, of this chapter, which said provisions, so far as applicable, are extended to and shall apply to the powers conferred by this subdivision.

Subd. 25, amended by L. 1916, ch. 114, in effect Apr. 1, 1916, as follows:

25. Disposition of garbage and ashes. May provide for the removal from the buildings in said village and for the disposition of swill, garbage, ashes and rubbish of said buildings, or for the removal and disposition of the swill and garbage alone, or the ashes alone, either directly through the employees of said village or by contracting with other persons, provided, however, that authority shall be first obtained therefor by a proposition adopted at a village election, which proposition shall state the maximum amount to be expended for such purpose or purposes in any one year.

Subd. 28, added by L. 1916, ch. 108, in effect Apr. 1, 1916, as follows:

28. Publicity fund. When authorized by a resolution duly adopted by a majority of the qualified voters of such village, voting thereon at a general village election or at a special election called and held for such purpose, may establish a publicity fund of such amount as the resolution may direct, to be expended for the purpose of advertising the advantages of such village as a summer and winter resort or otherwise, including the necessary and legitimate expense of securing the designation of such village as the place for holding the convention or meeting of any organization or society, and for such other and additional purposes as may tend to promote the general commercial and industrial welfare of the village, and for that purpose may raise by taxation a sum not exceeding one thousand dollars per annum to be assessed, levied and collected in the same manner that other village taxes are assessed, levied and collected.

Attorney; recovery of salary after village becomes city.—An attorney at law retained by an incorporated village at an annual salary is not an officer of the village. Where several months after plaintiff's appointment as attorney for an incorporated village at an annual salary the city, which pursuant to legislative enactment came into existence as the successor corporation of the village, refuses to permit him to complete his services, he is entitled to recover from it the unpaid balance of his salary due upon the contract of his general retainer. *Fisher v. City of Mechanicville* (1916), 94 Misc. 134, 157 N. Y. Supp. 518.

§ 90. Village ordinances.—*Subd. 29, added by L. 1916, ch. 199, in effect Apr. 12, 1916, as follows:*

29. Keeping of swine. To regulate or prohibit the keeping of swine within the village limits.

L. 1916, ch. 52.

Application of surplus moneys.

§§ 90a, 101a.

§ 90-a. **Building and sanitary codes.**—The board of trustees of any village, whether organized under a general or special act, may, by a majority vote of all of said board at a meeting thereof duly held, taken and recorded by calling the ayes and noes adopt an ordinance to be known as the building code, which shall provide therein rules and regulations for the construction, alteration, removal and inspection of all buildings or structures erected or to be erected within the limits of the village, providing therein and regulating thereby the plans and means of all such construction, alteration or removal of all of such buildings and structures. The board of trustees of any village of the first class or of any village in a county of less than one hundred and fifty thousand population, which adjoins a city of the first class by a majority vote of all of said board, at a meeting thereof duly held, taken and recorded by calling the ayes and noes may also adopt an ordinance to be known as the sanitary code, which shall provide therein rules and regulations for the construction, alteration, removal and inspection of all plumbing and drainage systems in buildings now erected or to be erected upon property within the limits of the village, providing therein and regulating thereby all such construction, alteration or removal of all such plumbing and drainage, and the licensing of plumbers to do such work. The board of trustees shall have authority to provide penalties or punishments for disobedience to any such ordinances in the manner prescribed by section ninety-three of this chapter and may appoint and remove such inspectors and examiners as may be required to properly execute the provisions of said ordinances, and shall possess authority to alter and amend said ordinances from time to time and to issue licenses to plumbers and builders by a like vote. Nothing herein contained shall impair any other power conferred by law upon a board of trustees in relation to the same or kindred matters. (*Added by L. 1910, ch. 202, and amended by L. 1915, ch. 36, and L. 1916, ch. 397, in effect May 2, 1916.*)

§ 101-a. **Application of surplus moneys of a department.**—If there shall be outstanding no obligations of the village on account of a particular department and if after the payment of the current expenses of such department there shall remain a surplus in the fund of that department such surplus may be applied to the payment of any existing obligation of the village or transferred to the general fund. (*Added by L. 1916, ch. 52, in effect Mch. 29, 1916.*)

§ 131. **Second election on proposition to raise money.**

Section as to submission of proposition to electors, not applicable to village of Waterford.—The provision, prohibiting the submission of a proposition involving the expenditure of money to the electors before the lapse of ninety days after a previous rejection thereof, is inconsistent with chapter 243 of the Laws of 1859, a special act incorporating the village of Waterford, and under section, 380 of the Village Law does not apply to the submission of propositions to the electors of said village. Under the charter the trustees have discretionary power to call special

meetings of electors. A proposition which does not specify the "object or objects, stating the sum proposed to be raised for each object," as required by sections 15 and 18 of the charter of said village, should not be submitted to the electors. *O'Connor v. Village of Waterford* (1916), 171 App. Div. 425, 156 N. Y. Supp. 933.

§ 138-a. **Designation of town receiver of taxes as village receiver in certain villages.**—In each village in this state within a county having a population of more than three hundred thousand, and less than four hundred thousand, according to the last state enumeration prior to the passage of this act, when in and for any such county a special tax act has been heretofore or hereafter enacted, providing for, among other things a town receiver of taxes with duties to collect all state, county, town, school and town district taxes and assessments levied or assessed upon any taxable property within such town for the state, county, town, school or town tax district or part thereof therein, the board of trustees, if authorized so to do by special election called for the purpose, shall after such authorization designate and appoint the town receiver of taxes as a village receiver of taxes at a compensation per annum not to exceed one per centum of the total of the village tax roll of each year respectively, and such designation and appointment shall be made annually at the first meeting of the village board after the commencement of the term of members of the board elected at the immediately preceding village election, and the term of office as village receiver of taxes of such town receiver when so designated and appointed shall continue for one year or if his term of office as town receiver expires within the year, then shall continue until the expiration within such year of his term of office as town receiver, and in the event that his term of office as town receiver expires within such year the vacancy in the office of village receiver of taxes thus created shall be filled by a like designation and appointment by the village board of the successor in office of such town receiver of taxes which said new designation and appointment of said successor in office of such town receiver of taxes shall continue for the remainder of said year and until the next annual like designation and appointment of the town receiver of taxes as village receiver of taxes by the village board. The said town receiver of taxes when so designated and appointed as village receiver of taxes shall in respect to the collection of village taxes and as to all his duties with respect to village taxes be deemed to act exclusively as the village tax receiver, and as such village receiver of taxes he shall before entering upon the duties of such office execute to the village and file with the village clerk an official undertaking in such sum and with such sureties as the village board of trustees shall direct and approve, and the village board of trustees may at any time require such officer to file a new official undertaking for such sum and with such sureties as the village board shall approve, and in any village where a proposition has been adopted giving the authority as aforesaid to the board of trustees to designate

and appoint the town receiver of taxes as village receiver of taxes, thereafter there shall be no village collector of taxes elected until such time as after a period of two years following the adoption of such proposition, a proposition shall be adopted at a special election revoking the authority to designate and appoint the town receiver of taxes as village receiver of taxes as aforesaid. From and after the passage of this act it shall be the duty of any such town receiver of taxes in addition to the other duties imposed upon him by law, to file an undertaking as herein required and to collect village taxes and perform all the other duties herein required of a village receiver of taxes and all of the provisions of the general village law relating to a collector of taxes, and as to villages incorporated under special laws, of any special laws applicable to any such village not incorporated under the general village law, and all provisions at the time of the passage of this act in force relating to the collection of taxes, not inconsistent with this act, shall be deemed to continue in force and to apply to said receiver of taxes in the collection of village taxes, and shall be deemed to apply to the collection of village taxes, provided, however, that the penalties to be collected under said law or laws shall belong to the village, and provided further that all such village taxes, assessments, and penalties thereon shall be daily deposited in the village bank account and a duplicate deposit slip or receipt therefor together with an itemized statement of the taxes, assessment and penalties paid shall be transmitted to the treasurer of the village, and an itemized report thereof when required by the village board shall be submitted to said board. (*Added by L. 1916, ch. 556, in effect May 15, 1916.*)

§ 138-b. **Taxes to be certified to town receiver.**—All village taxes and assessments which have been or shall have been imposed in any such village shall be certified to said receiver of taxes by the treasurer of the village and shall be collected by the receiver of taxes, and any cancellations thereof by the proper authorities in accordance with law shall immediately upon any such cancellation be certified to said receiver of taxes, and all such village taxes remaining unpaid and uncanceled shall be collected by the said receiver of taxes and deposited and a report made thereon to the village treasurer and whenever required to the village board, as set forth in the last preceding section for the collection of current taxes. In case that all taxes and assessments which shall have accrued and been imposed in such village, the said receiver of taxes is hereby authorized, directed and empowered to collect such taxes as hereinbefore provided, with interest and penalties, pursuant to the provisions of the law under which such taxes and assessments accrued or were imposed, and in the manner provided by law applicable to village collectors or receivers and to village treasurers to collect such taxes or assessments at the time of their imposition. (*Added by L. 1916, ch. 556, in effect May 15, 1916.*)

§ 138-c. **Sale of village tax liens; application of special act.**—Whenever a proposition as provided in section one hundred and thirty-eight-a to authorize the designation and appointment of the town receiver of taxes as a village receiver of taxes shall be submitted at a special election there shall also be submitted at the same special election a separate proposition to authorize sales of village tax liens for village taxes and assessments in accordance with said special tax law applicable to said county and upon the adoption of such proposition all the provisions of said special tax law for said county for the sales of tax liens for taxes and assessments, and the foreclosure thereof, including each and every provision of said special act relating to sales and foreclosures of tax liens and all the pleadings and proceedings of such foreclosure actions shall apply to the village tax liens and to village tax sales and foreclosure of transfer of tax liens in every respect and to the same extent as to village taxes as by said special act is made applicable to town taxes, and for this purpose the village board shall be authorized to contract with the supervisor of the town, or said receiver of taxes, as the case may be, to sell and transfer for the village, village tax liens at the same time and in the same manner, and with the same force and effect and under all the provisions thereof as provided in said act, and whenever the said supervisor or receiver of taxes conducts a sale of village tax liens, he shall be deemed to act as an officer of the village exclusively for the village, and shall immediately account and pay over to the village, and for this purpose he shall prior to the conduct of said sales give a bond to the village to be approved by the village board as to amount and sufficiency of sureties and his compensation shall not exceed an amount to be fixed by the village board and approved by the town board and shall not exceed one per centum of the total moneys received by him for and on behalf of the village, and at any such sale the village may be a purchaser and the said compensation so fixed to the supervisor or to said receiver shall be added to the amount of the tax as an additional penalty for the nonpayment thereof and the disbursements of the said supervisor or receiver authorized by said special tax act as to town taxes are hereby authorized as to village taxes, and upon vouchers therefor countersigned by such supervisor or receiver, the same shall be paid by the village the same as other village charges. (*Added by L. 1916, ch. 556, in effect May 15, 1916.*)

§ 144. **Dedication of streets.**—An owner of land in a village who has laid out a street thereon may dedicate such street, or any part thereof, or an easement therein, to the village for a public street, or an owner may dedicate for such purpose land not laid out as a street. Upon an offer in writing by the owner to make such a dedication, the board of trustees shall meet to consider the matter; and it may, by resolution, determine to accept a dedication of the whole or any part of the land described in such offer, or of the whole or any part of such street, to be

described in such resolution. Upon the adoption of such a resolution the owner may execute and deliver to the village clerk a proper conveyance of the land to be dedicated. The board of trustees may, by resolution, accept the conveyance, and a certified copy of such resolution, together with the conveyance, shall thereupon be recorded in the office of the county clerk. Upon the acceptance of the conveyance the land described therein shall become and be a public street of the village. No street less than two rods in width shall be accepted by dedication unless a proposition therefor be submitted to and adopted at a village election after consideration and approval by the board of trustees, as provided in sections one hundred and forty-five, one hundred and forty-six and one hundred and forty-seven of this article. All offers of dedication must be entered at length in the minutes of the board of trustees. (*Amended by L. 1916, ch. 10, in effect Feb. 21, 1916.*)

§ 145. **Petition for street improvement or acceptance.**—Five resident freeholders may present to the board of trustees a petition for laying out, altering, widening, narrowing, discontinuing or accepting the dedication of a street in the village. The petitioners must deposit with such petition the sum of fifty dollars to cover all expenses for publishing, posting and serving notices of meeting of board to consider the petition. If petition be granted said deposit shall be returned in full to the petitioners, but if denied, the surplus only shall be so returned after paying expenses mentioned in this section. The petition must be addressed to the board of trustees and must contain a statement of the following facts:

1. The names and residences of the petitioners.
2. If the petition be for the laying out of a street, the general course thereof, and a description of the land to be taken.
3. If the petition be for the alteration of a street, its name, the proposed alteration, and a description of the land, if any, to be taken.
4. If the petition be for the widening of a street, its name and description of the land to be taken.
5. If the petition be for the narrowing of a street, its name, its proposed width after such alteration, and the manner in which such narrowing is to be effected.
6. If the petition be for the discontinuance of a street, its name, and the part proposed to be discontinued.
7. If the petition be for the laying out, alteration or widening of a street, the names and residences of the owners of all land to be taken.
8. If the petition be for the narrowing or discontinuance of a street, the names and residences of the owners of adjoining lands affected.
9. If the petition be for the acceptance of a street of less than two rods in width, the width and length of such street, the name and residence of each owner of land adjoining the same and the improvements to be included in such dedication. (*Amended by L. 1911, ch. 310, and L. 1916, ch. 10, in effect Feb. 21, 1916.*)

§§ 146, 159.

Meeting to consider petition.

L. 1916, ch. 10.

§ 146. **Notice of meeting of board to consider petition.**—Upon the presentation of the petition the board shall immediately give notice that it will meet at a specified time and place, not less than ten nor more than twenty days from the date of such notice, to consider the petition. The notice must state the general object of the petition, and if it be for the laying out of a street, a general description of its proposed course, and in any other case, the name of the street proposed to be changed, discontinued or accepted.

The notice must be served upon the following persons, unless such service be waived by them in writing:

1. If the petition be for the laying out of a street, upon each owner of land to be taken.

2. If the petition be for the alteration or widening of a street, upon each owner of land, if any, to be taken, and upon each owner of land adjoining the part of the street affected.

3. If the petition be for the narrowing of a street, upon each owner of land adjoining the part of the street affected.

4. If the petition be for the discontinuance of a street, upon each owner of land adjoining the part of the street proposed to be discontinued, and also upon the owner of land otherwise affected by the proposed discontinuance. .

5. If the petition be for the acceptance of a street of less than two rods in width, upon each owner of land adjoining the same.

If a person other than the owner is in possession of such land, notice must also be served upon him. Such notice shall also be published in each newspaper in the village, and posted in five conspicuous places therein. The notice must be served, posted and published at least ten days before the hearing.

6. If the street petitioned to be laid out, altered, widened, narrowed, discontinued or accepted shall cross a railroad such notice shall be served upon the railroad company as required by section ninety of the railroad law. (*Amended by L. 1912, ch. 224, and L. 1916, ch. 10, in effect Feb. 21, 1916.*)

§ 159. **Changing grade of street or bridge.**

Damage to estate by entirety; proceeding by tenant by entirety.—Where a husband and wife are the owners of an estate by the entirety, and such land is injured by a change in the grade of a village street, the husband can institute and maintain a proceeding for an assessment of damages to such property without joining his wife, his co-tenant, as a party to the proceeding, but the damage to which he is entitled under this section should be given for the diminution of the value of his estate as a tenant by the entirety, and not as rents and profits or damages to his use and occupation. In making their report, after such appraisal, the commissioners should state that, in fixing their award, they have considered the question of benefits, but they should not itemize the award by allowing a specific sum for damage to, and loss of, shade trees as part of the damages to the fee of the premises. *Goodrich v. Village of Otego* (1915), 216 N. Y. 112, revg. 170 App. Div. —, 154 N. Y. Supp. 1124.

L. 1916, ch. 42.

Parks, athletic fields and playgrounds.

§§ 169, 188a.

§ 169. **Acquisition of lands for parks, squares, athletic fields and playgrounds.**—The board of trustees may, on behalf of the village, accept by grant or devise a gift of land for a public park, square, athletic field or playground, within the village, or wholly within three miles of the boundaries thereof, or may submit to a village election a proposition to purchase land so located for such purpose at an expense, specified in the proposition, specifying the maximum amount to be paid therefor and the mode of raising such amount. If the proposition be adopted, the board may purchase such land accordingly, or, if unable to agree with the owners for the purchase thereof, may acquire title thereto by condemnation; but if the commissioners appointed in the condemnation proceedings shall fix the value of the land at a larger amount than authorized to be paid therefor by such election, the condemnation proceedings shall be abandoned and the costs of the defendants shall be paid by the village unless payment of such larger amount shall be authorized at a village election. The board of trustees may lease in the name of the village lands within the village for a public park, athletic field or playground and may equip the same with suitable buildings, structures and apparatus and may thereafter maintain and improve the same at the expense of the village, but such lease shall not be made for a longer period than five years nor at an expense for each fiscal year exceeding one mill on every dollar of taxable property of the village as appears on the last preceding village assessment-roll unless authorized at a village election. The amount of such rent shall be paid in annual instalments commencing with the date of the lease. Upon the acquisition of land for the purposes of this section, either by gift, purchase or lease, the board may establish and maintain the same for its intended purposes and shall have the power to perform all the duties of a separate board of park commissioners as provided for in this chapter. (*Amended by L. 1909, ch. 469, and L. 1916, ch. 42, in effect Mch. 15, 1916.*)

§ 188-a. **Police department.**—The board of trustees of a village in a county adjoining a city of the first class, or if the municipal board continued by section sixty-six acts as police commissioners, such board may, instead of appointing policemen for fixed terms pursuant to section one hundred and eighty-eight, by resolution, establish a police department in such village, and appoint a chief of police and such number of policemen as may be needed, and fix their compensation. No person shall be eligible to membership in such police force who shall not be a citizen of the United States, who shall have been convicted of felony, who shall be unable to read or write understandingly the English language or who shall not have resided within the village two years, next preceding his appointment. No person shall be appointed a member of such police force who is over the age of forty-five years, nor continue to act as such after reaching the age of sixty-five years; provided, however, that village po-

§§ 200, 204.

Fire companies; fire commissioners.

L. 1916, ch. 25.

licemen who are over the age of forty-five years and under the age of sixty-five years at the time of the organization of such police department shall be eligible for appointment in such department. Except as provided by this section a member of such police force shall continue in office unless suspended or dismissed. A member found guilty upon charges, after notice and opportunity to be heard in his defense, of neglect or dereliction in the performance of official duty, or violation of rules and regulations, or disobedience of orders, or absence without leave, or other breach of discipline, or incompetency to perform official duty, or an act or delinquency seriously affecting his general character or fitness for office, may be punished by the board of trustees or other municipal board having jurisdiction, by reprimand, forfeiture and the withholding of salary or compensation for a specified time not exceeding twenty days, suspension from duty for a specified time not exceeding twenty days, and the withholding of salary or compensation during such suspension, or by dismissal from the force. The dismissal of a member of the force, however, shall be subject to review by certiorari. (*Added by L. 1915, ch. 479, and amended by L. 1916, ch. 145, in effect Apr. 6, 1916.*)

L. 1916, ch. 145, § 2. Appointments heretofore made to a police department in accordance with the provisions of section one hundred and eighty-eight-a of the village law, as amended by this act, are hereby legalized and confirmed.

§ 200. General powers of the board of fire commissioners.—*Subd. 10, added by L. 1916, ch. 248, in effect Apr. 18, 1916, as follows:*

10. May, by resolution, authorize residents of described territory outside the village to become members of the fire department of the village, with all the powers, duties and privileges of such members, if such territory is afforded fire protection by the fire department of the village.

Note.—L. 1916, ch. 316, also added a duplicate subdivision, evidently approved by mistake.

§ 204. Election of company officers and delegates.—Each of the several companies whose members constitute the fire department of the village shall hold an annual meeting on the first Tuesday in April in each year. At such meeting the members of each company shall elect by ballot from their own number a captain and an assistant captain, who must be approved by the board of fire commissioners, one warden and one delegate to the general convention of the fire department. The terms of office of the captain and assistant captain shall be one year, the wardens two years, and the delegates three years, respectively, and any vacancies occurring in any such offices shall be filled by election in like manner. At the first annual meeting after this act takes effect two wardens and three delegates shall be elected, the wardens to serve for one and two years, respectively, and the delegates for one, two and three years, respectively. (*Amended by L. 1916, ch. 25, in effect Mch. 9, 1916.*)

L. 1916, ch. 20.

Lighting system; extension.

§§ 244, 264.

§ 244. **Supervision and extension of system.**—The lighting system acquired or established under this article shall be under the control and supervision of the board of light commissioners. The board shall keep it in repair and may, from time to time, if it has sufficient funds, extend such system, if the expense thereof in any year will not exceed one thousand dollars. If the estimated expense will exceed one thousand dollars, such extension can only be made when authorized by a proposition adopted at an election, in which event, it shall be so made. Such system may be so extended outside the village in, upon and along the highways within a town in which the village is wholly or partly situated, or within a town adjoining that in which the village is situated if the village be wholly within one town and in a county of less than one hundred thousand population, provided, however, that if at the time of such extension there shall be a private electric light corporation operating within such village or within the territory into which such system shall be extended, such extension shall not be made without the permission and approval of the proper public service commission. If such system shall be so extended outside of a village into or through a town or adjoining town or a lighting district thereof, the board of light commissioners of the village may contract with the town board of such town for lighting the streets, highways, public grounds and public buildings of such town or lighting district, in pursuance of the provisions of article twelve of the town law, which shall be applicable to such contract and to the levying of a tax for the payment of the amounts which shall be payable thereunder to the treasurer of the village. Wherever such system shall be so extended outside a village, occupants of premises adjacent to such extended system outside the village shall be entitled to be supplied with light therefrom under the same conditions and at the same rates as occupants of premises in the village. (*Amended by L. 1912, ch. 364, and L. 1916, ch. 20, in effect Mch. 6, 1916.*)

§ 264. **Construction of sewers solely at expense of property benefited.**

Notice of time and place of hearing; section must be deemed to have been enacted on date when original statute was passed.—This section, requiring notice to be given to each property owner of the time and place of hearing, before the extension of a proposed sewer is decided upon, is a re-enactment of section 264 of the former Village Law enacted in 1897, and by virtue of chapter 596 of the Laws of 1909, prescribing the rules for the construction of the Consolidated Laws, it is to be deemed to have been enacted on the date when the original statute was passed, and not on the date when the Consolidated Laws were enacted, and this being prior to the enactment of the charter of the village of Saratoga Springs which governs the extension of a sewer system, the procedure prescribed by the charter should be followed. *Harris v. City of Saratoga Springs* (1916), 171 App. Div. 282, 156 N. Y. Supp. 844.

§ 348. **Extension of boundaries.**

Extension of boundaries; petition; description of boundaries.—Where a citizen of an incorporated village petitions the trustees of the village to submit to the

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electors thereof a proposition to extend the boundaries of the village, his right to have the petition granted depends upon whether the petition complies with the statute (Village Law, §§ 3, 348), which prescribes that the description of the territory to be incorporated shall "suitably" describe "such district with common certainty." Where such description leaves the exact boundaries doubtful and uncertain, the petition is defective and the petitioner may not compel the trustees to submit the proposition. *People ex rel. Underwood v. Village of Patchogue* (1916), 217 N. Y. 466, affg. 171 App. Div. 347, 156 N. Y. Supp. 1096.

A petition to extend the corporate limits of a village, which states the boundaries of the new territory in so vague and indefinite a manner that disputes may arise as to the right to levy taxes or as to the jurisdictional right over waters, is insufficient. *People ex rel. Underwood v. Trustees of Patchogue* (1916), 171 App. Div. 347, 156 N. Y. Supp. 1096, affd. 217 N. Y. 466.

A verification of such petition, as provided by section 526 of the Code of Civil Procedure, does not comply with section 348 of the Village Law, as amended, especially where the body of the petition does not allege the jurisdictional fact that its signers represented a majority in value of the property therein assessed upon the last preceding town assessment roll. *People ex rel. Underwood v. Trustees of Patchogue* (1916), 171 App. Div. 347, 156 N. Y. Supp. 1096 affd. 217 N. Y. 466.

The corporate limits of a village should not be a matter of deduction through legal reasoning, but should be made obvious by being stated and described with common certainty. The same certainty necessary for original boundaries should be required in marking out annexed territory. *People ex rel. Underwood v. Trustees of Patchogue* (1916), 171 App. Div. 347, 156 N. Y. Supp. 1096, affd. 217 N. Y. 466.

VINEGAR.

Adulteration; Agr. L., §§ 70-72.

WARREN COUNTY.

Salary of county judge; County L., § 232.

WORKMEN'S COMPENSATION.

Insurance on public works; General Municipal L., § 90; State Finance L., § 51.

WORKMEN'S COMPENSATION LAW.

(L. 1913, ch. 816; re-enacted L. 1914, ch. 41.)

§ 1. Short title.

Constitutionality.—The Workmen's Compensation Law (L. 1914, ch. 41) is not violative of the Fourteenth Amendment of the Constitution of the United States for taking property without due process of law, and under the amendment to the State Constitution, adopted November 4, 1913, and now section 19 of article 1 of such Constitution, it is a valid enactment within the police power of the state for the promotion of the general welfare. It protects both employer and employee, the former from wasteful suits and extravagant verdicts, the latter from the expense, uncertainties and delays of litigation in all cases and from the certainty of defeat if unable to establish a case of actionable negligence; it creates a fund for the payment of the compensation allowed for disability or death from accidental injuries sustained by employees engaged in certain enumerated hazardous employments, and distributes the burden thereof equitably over the business and industries affected. The fact that the statute deprives an employee, injured by negligence imputable to the employer, of a further right of action against his employer does not render the act unconstitutional. The act does not deal with intentional wrongs but only with accidental injuries for which a new remedy is substituted in place of the common-law right of action. The legislature has the power, in the promotion of the public welfare, to require both employer and employee to yield something toward the establishment of a principle and plan of compensation for their mutual protection and advantage, and it is certainly competent for the legislature to provide, by the creation of an insurance fund, for a limited compensation to the employee for all accidental injuries, regardless of whether there was a cause of action for them at common law. *Jensen v. Southern Pacific Co.* (1915), 215 N. Y. 514, affg. 167 App. Div. 945, 152 N. Y. Supp. 1120.

The Workmen's Compensation Law as re-enacted and amended by chapter 41 of the Laws of 1914 is constitutional and the remedy thereby provided for an employee engaged in the employments enumerated therein is exclusive and in full substitution for any action for damages. *Connors v. Semet-Solvay Co.* (1916), 94 Misc. 405, 159 N. Y. Supp. 431.

Construction.—In determining the intention of the legislature in enacting the Workmen's Compensation Law there are two provisions of the act that must constantly be borne in mind as they affect and characterize all the other provisions of the act. 1. In the absence of substantial evidence to the contrary it must be presumed that the claim comes within the provisions of the act (§ 21). 2. The liability of the employer for compensation includes every accidental personal injury sustained by the employee "*arising out of and in the course of his employment, without regard to fault as a cause of such injury*" (§ 10). The legislature in passing the act, intended to secure injured workmen and their dependents from becoming objects of charity, and to make reasonable compensation for injuries sustained or death incurred by reason of such employment a part of the expense of the lines of business included within the definition of hazardous employments as stated in the act. The danger of injured workingmen and their dependents becoming objects of charity is just as great when an accident occurs outside the boundaries of the state as it is when it occurs within the state, and the interests of the state in its citizens is just as great in one case as in the other. The act, taken as a whole, in view of its humane purpose, should be construed to intend that in every case of employment there is a constructive contract between the employer and employee, general in its terms and unlimited as to territory, that the employer shall pay as

provided by the act for a disability or the death of the employee as therein stated. The duty under the statute defines the terms of the contract. *Post v. Burger & Gohlke* (1916), 216 N. Y. 544, affg. 168 App. Div. 403, 153 N. Y. Supp. 505.

To be construed liberally.—The Workmen's Compensation Act was the expression of what was regarded by the legislature as a wise public policy concerning injured employees, and is to be interpreted with fair liberality, to the end of securing the benefits which it was intended to accomplish. *Matter of Petrie* (1915), 215 N. Y. 335, affg. 165 App. Div. 561, 151 N. Y. Supp. 307.

The statute must be given a broad and liberal construction so as to carry out the evident legislative intent. *Smith v. Price* (1915), 168 App. Div. 421, 153 N. Y. Supp. 221.

The statute is to be construed remedially and beneficially with the view of carrying out fairly and fully the legislative purpose and with the view to bringing within the purview and operation of the act all workers whose accidental injuries are inherent occupational risks. *Rheinwald v. Builders' Brick & Supply Co.* (1915), 168 App. Div. 425, 153 N. Y. Supp. 598.

The scheme of the Workmen's Compensation Law is, in brief, to charge upon the business through insurance the losses caused by it, making the business and the ultimate consumer of its product and not the injured employee bear the burden of the accidents incident to the business. The statute contemplates the protection not only of the employee, but of the employer at the expense of the ultimate consumer. The law contemplates equality and that all employees and employers shall be measured by the same rule, without regard to the particular manner in which the insurance is carried. *Spratt v. Sweeney & Gray Co.* (1915), 168 App. Div. 403, 153 N. Y. Supp. 505, affd. 216 N. Y. 544.

The Workmen's Compensation Act rests on the economic and humanitarian principles that compensation should be given at the expense of the business to the employee or his representatives for earning capacity destroyed by an accident in the course of or connected with his work, and this not only for his own benefit but for the benefit of the state which otherwise might be charged with his support, and this purpose ought not to be defeated by placing too narrow a limit upon the nature of the acts which will be regarded as pertaining to his employment. *Waters v. Taylor Co.* (1916), 218 N. Y. 248.

The act was passed to benefit workmen in hazardous employments who were without a legal remedy. Compensation is given without regard to the fault of the master at common law or under the employers' liability acts. The law has been and should be construed fairly, indeed liberally, in favor of the employee. *Heitz v. Ruppert* (1916), 218 N. Y. 148, 154.

Decisions under English Act applicable.—*It seems*, that, as the Workmen's Compensation Law is modeled upon the English Act, decisions under that act may be considered by our courts. *De Filippis v. Falkenberg* (1915), 170 App. Div. 153, 155 N. Y. Supp. 761.

§ 2. Application.—Compensation provided for in this chapter shall be payable for injuries sustained or death incurred by employees engaged in the following hazardous employments:

Group 1. The operation, including construction and repair, of railways operated by steam, electric or other motive power, street railways, and incline railways, but not their construction when constructed by any person other than the company which owns or operates the railway, including work of express, sleeping, parlor and dining car employees on railway trains.

Group 2. Construction, repair and operation of railways not included in group one.

Group 3. The operation, including construction and repair, of car shops, machine shops, steam and power plants, and other works for the purposes of any such railway, or used or to be used in connection with it when operated, constructed or repaired by the company which owns or operates the railway.

Group 4. The operation, including construction and repair, of car shops, machine shops, steam and power plants, not included in group three.

Group 5. The operation, including construction and repair, of telephone lines and wires for the purposes of the business of a telephone company, or used or to be used in connection with its business, when constructed or operated by the company.

Group 6. The operation, including construction and repair, of telegraph lines and wires for the purposes of the business of a telegraph company, or used or to be used in connection with its business, when constructed or operated by the company.

Group 7. Construction or repair of telegraph and telephone lines not included in groups five and six.

Group 8. The operation, within or without the state, including repair, of vessels other than vessels of other states or countries used in interstate or foreign commerce, when operated or repaired by the company; marine wrecking.

Group 9. Shipbuilding, including construction and repair in a shipyard or elsewhere, not included in group eight.

Group 10. Longshore work, including the loading or unloading of cargoes or parts of cargoes of grain, coal, ore, freight, general merchandise, lumber or other products or materials, or moving or handling the same on any dock, platform or place, or in any warehouse or other place of storage.

Group 11. Dredging, subaqueous or caisson construction or repair, and pile driving.

Group 12. Construction, installation, repair or operation of electric light and electric power lines, dynamos, or appliances, and power transmission lines.

Group 13. Paving; road building, curb and sidewalk construction or repair; sewer and subway construction or repair, work under compressed air, excavation, tunneling and shaft sinking, well digging, laying and repair of underground pipes, cables and wires, not included in other groups; street cleaning, ashes, garbage or snow removal; operation of waterworks.

Group 14. Lumbering; logging, river-driving, rafting, booming, saw mills, bark mills; shingle mills, lath mills, lumber yards; manufacture of veneer and of excelsior; manufacture of barrels, kegs, vats, tubs, staves, spokes, or headings.

Group 15. Pulp and paper mills.

Group 16. Manufacture of furniture, interior woodwork, organs, pianos, piano actions, canoes, small boats, coffins, wicker and rattan ware; upholstering; manufacture of mattresses or bed springs.

Group 17. Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, mouldings, window and door screens, window shades, carpet sweepers, wooden toys, wooden articles and wares or baskets; cork cutting.

Group 18. Mining; reduction of ores and smelting; preparation of metals or minerals; oil and gas wells.

Group 19. Quarries; sand, shale, clay or gravel pits, lime kilns; manufacture of brick, tile, terra-cotta, asbestos, fire-proofing, or paving blocks, manufacture of calcium carbide, cement, asphalt or paving material; stone crushing or grinding.

Group 20. Manufacture of glass, glass products, glassware, porcelain or pottery.

Group 21. Iron, steel or metal foundries; rolling mills; manufacture of castings, forgings, heavy engines, locomotives, machinery, safes, anchors, cables, rails, shafting, wires, tubing, pipes, sheet metal, boilers, furnaces, stoves, structural steel, iron or metal; machine shops including repairs.

Group 22. Operation and repair of stationary engines and boilers, freight and passenger elevators, not included in other groups; window cleaning; heating and lighting.

Group 23. Manufacture of small castings or forgings, metal wares, instruments, utensils and articles, hardware, nails, wire goods, screws, bolts, metal beds, sanitary, water, gas or electric fixtures, light machines, typewriters, cash registers, adding machines, carriage mountings, bicycles, metal toys, tools, cutlery, instruments, photographic cameras and supplies, sheet metal products, buttons; jewelry; gold, silver and plated ware; articles of bone, ivory and shell.

Group 24. Manufacture of agricultural implements, threshing machines, traction engines, wagons, carriages, sleighs, vehicles, automobiles, motor trucks, toy wagons, sleighs or baby carriages; blacksmiths; horse-shoers.

Group 25. Manufacture of explosives and dangerous chemicals, corrosive acids or salts, ammonia, gasoline, petroleum, petroleum products, celluloid, gas, charcoal, artificial ice, gun powder or ammunition; ice harvesting, ice storage and ice distribution.

Group 26. Manufacture of paint, color, varnish, oil, japons, turpentine, printing and other ink, printers' rollers, tar, tarred, pitched or asphalted paper.

Group 27. Distilleries, breweries; manufacture of spirituous or malt liquors, alcohol, wine, mineral water or soda waters; bottling.

Group 28. Manufacture of drugs and chemicals, not specified in group twenty-five, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, non-corrosive acids or chemical preparations, fer-

tilizers, including garbage or sewerage disposal plants; shoe blacking or polish.

Group 29. Milling; manufacture of cereals or cattle foods, warehousing; storage of all kinds and storage for hire; operation of grain elevators.

Group 30. Packing houses, meat markets, abattoirs, manufacture or preparation of meats or meat products or glue, gelatine, paste or wax.

Group 31. Tanneries.

Group 32. Furriers; manufacture of leather goods and products, belting, saddlery, harness, trunks, valises, boots, shoes, gloves, umbrellas, rubber goods, rubber shoes, tubing, tires or hose.

Group 33. Canning or preparation of fruit, vegetables, fish or food stuffs; pickle factories and sugar refineries; manufacture of dairy products.

Group 34. Bakeries, including manufacture of crackers and biscuits, manufacture of confectionery, spices or condiments.

Group 35. Manufacture of tobacco, cigars, cigarettes or tobacco products.

Group 36. Manufacture of cordage, ropes, fibre, brooms or brushes; manilla or hemp products.

Group 37. Flax mills; manufacture of textiles or fabrics, spinning, weaving and knitting manufactories; manufacture of yarn, thread, hosiery, cloth, blankets, carpets, canvas, bags, shoddy or felt.

Group 38. Manufacture of men's or women's clothing, white wear, shirts, collars, corsets, hats, caps, furs or robes, or other articles from textiles or fabrics.

Group 39. Power laundries; dyeing, cleaning or bleaching.

Group 40. Printing, engraving, photo-engraving, stereotyping, electrotyping, lithographing, embossing; manufacture of moving picture machines and films; manufacture of stationery, paper, cardboard boxes, bags, or wall-paper; and book-binding.

Group 41. The operation, otherwise than on tracks, on streets, highways, or elsewhere of cars, trucks, wagons or other vehicles, and rollers and engines, propelled by steam, gas, gasoline, electric, mechanical or other power or drawn by horses or mules; public garages, livery, boarding or sales stables; movers of all kinds.

Group 42. Stone cutting or dressing; marble works; manufacture of artificial stone; steel building and bridge construction or repair; installation or repair of elevators, fire escapes, boilers, engines or heavy machinery; brick-laying, tile-laying, mason work, stone-setting, concrete work, plastering; and manufacture of concrete blocks; structural carpentry; painting, papering, picture hanging, glazing, decorating or renovating; sheet metal work; roofing; construction, repair and demolition of buildings, bridges and other structures; salvage of buildings or contents; plumbing, sanitary lighting or heating installation or repair; installation and covering of pipes or boilers; junk dealers.

Group 43. Any employment enumerated in the foregoing groups and carried on by the state or a municipal corporation or other subdivision

§ 2.

Application; groups of employment.

L. 1916, ch. 622.

thereof, notwithstanding the definition of the term "employment" in subdivision five of section three of this chapter.

Any employer not carrying on one of the employments enumerated in this section, or who carrying on one of such employments has in his employ an employee not included within the term "employee" as defined by section three of this chapter, and the employees of any such employer may, by their joint election, elect to become subject to the provisions of this chapter in the manner hereinafter provided. Such election on the part of the employer shall be made by posting notices thereof about the place where the workmen are employed, in a manner to be prescribed by rules to be adopted by the commission, and by filing with the commission a written statement, in a form to be prescribed by the commission, to the effect that he accepts the provisions of this chapter and that he adopts subject to the approval of the commission one of the methods of securing compensation to his employees prescribed in section fifty of this chapter which, when so filed with and approved by the commission as to form and method of securing compensation shall operate to subject him to the provisions of this chapter and of all acts amendatory thereof for the period of one year from the date of such approval, and thereafter without further act on his part for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file with the commission a notice in writing that he withdraws his election.

Any employee in the service of any such employer shall be deemed to have accepted, and shall be subject to the provisions of this chapter and any act amendatory thereof, if, at the time of the accident for which liability is claimed, the employer charged with such liability has not withdrawn his election and the employee shall not at the time of entering into his contract of hire have given to his employer notice in writing that he elects not to be subject to the provisions of this chapter and filed a copy thereof with the commission, or in the event that such contract for hire was made in advance of the election of the employer, such employee shall not have given to his employer and filed with the commission within twenty days after such election notice in writing that he elects not to be subject to such provisions.

A minor employee shall be deemed sui juris for the purpose of making such an election.

The rights and remedies, benefits and liabilities of an employer or employee so electing to become subject to the provisions of this chapter shall thereupon become the same as they would have been had they been engaged in one of the occupations or employments enumerated herein and the words employer or employee wherever they appear in this chapter shall be construed as including an employer or employee who has so elected to become subject to its provisions. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1916, ch. 622, in effect June 1, 1916.*)

L. 1916, ch. 622.

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§ 2.

Construction as to enumerated employments.—The statute should be construed as follows: *First.* If an employee's duties are exclusively or predominately within an enumerated employment and he is injured while doing work fairly within the scope of the ordinary and customary fulfillment of such duties, he has a rightful claim even though the particular act he was doing when the mishap befell him would not, of and by itself, ordinarily come within the wording of the statute. *Second.* But where an employee's duties do not come exclusively or predominately within the category of enumerated employments, and only incidentally does he do work fairly falling within that category, his right to remuneration must hinge on a finding that he sustained injury while actually and momentarily doing work named in the statute. *Gleisner v. Gross & Herbener* (1915), 170 App. Div. 37, 155 N. Y. Supp. 946.

Where an employee is injured while performing an act which is fairly incidental to the prosecution of a business and appropriate in carrying it forward and providing for its needs, he or his dependents are not to be barred from recovery because such act is not a step wholly embraced in the precise and characteristic process or operation which has been made the basis of the group in which employment is claimed. *Larsen v. Paine Drug Co.* (1916), 218 N. Y. 252, affg. 169 App. Div. 838.

The doctrine of respondeat superior has no application, nor are the rules of employers' liability for negligence controlling in applications for compensation provided for in the Workmen's Compensation Law. *Dale v. Saunders Brothers* (1916), 218 N. Y. 59, affg. 171 App. Div. 528, 157 N. Y. Supp. 1062.

Extraterritorial effect; when employment for service out of State not within statute; temporary absence from State does not relieve employer from liability.—The Workmen's Compensation Law is intended to regulate the relations between the employer and employee in hazardous employments within the State, and to protect the employee within the State from the ordinary risks of the employment and to charge those risks upon the ultimate consumer. The mere fact that an employee is engaged by a resident of the State to go out of the State for service, and no service in the State is contemplated or done, cannot bring the employment within the statute. But where the regular service of the employee is being performed in the State and as an incident thereto he goes into another State temporarily, such temporary absence does not relieve the employer from liability under the statute. Hence, where an employee of a general contractor, with an office in this State, had not performed any services here for several years, and his contract of employment did not contemplate any work within the State, no recovery may be had under the statute for his death sustained while employed in the State of Pennsylvania. He was engaged in an independent service in a foreign State, which employment does not come within the benefit of the statute. *Gardner v. Horseheads Construction Co.* (1916), 171 App. Div. 66, 156 N. Y. Supp. 899.

Where a resident of this state, employed by a corporation engaged in business in this state, is sent by his employer to perform work in another state away from the plant of the employer but under the employer's express direction, and while engaged therein is injured, he is entitled to compensation when in other respects he comes within the provisions of the law. *Post v. Burger & Gohlke* (1916), 216 N. Y. 544, affg. 168 App. Div. 403.

Employees, residents of this State, where their employers are engaged in business, and where they have entered into contracts of employment, are entitled to compensation under the Workmen's Compensation Law for injuries sustained in the ordinary course of employment without the State. This, because the premiums required to be paid by the employer are based upon the assumption that the employees who are engaged in and about his business are insured all the time they are acting within the course of their employment. *Spratt v. Sweeney & Gray Co.*

(1915), 168 App. Div. 403, 153 N. Y. Supp. 505; *Moore v. Lehigh Valley R. R. Co.* (1915), 169 App. Div. 177, 154 N. Y. Supp. 620.

Injury to workman who took shelter under cars during rain.—Where a workman employed to reconstruct telegraph lines for a railroad company took shelter during a sudden rain storm under cars standing on a railroad siding, and was injured when the cars were moved by a switch engine, he suffered an accidental injury arising out of and in the course of his employment, within the meaning of the statute, and is entitled to compensation, especially where no shelter from storms was provided for employees, and the time that the work was interrupted from the storm was not deducted from his wages. *Moore v. Lehigh Valley R. R. Co.* (1915), 169 App. Div. 177, 154 N. Y. Supp. 620.

Injury to employee leaving work after being dismissed from duty; injury in course of employment.—A workman who, having been employed by an underpinning company for about eight months at a certain sum per day payable weekly, was excused from work by the superintendent because he had been drinking and when he started to leave tripped and fell receiving injuries, was injured within the course of his employment, and is entitled to the benefit of the Workmen's Compensation Law. *Kiernan v. Friestedt Underpinning Co.* (1916), 171 App. Div. 539, 157 N. Y. Supp. 900.

Claim by captain of "lighter" injured while unloading in foreign State; presumption that vessel was not used in interstate commerce.—The claim of a resident of this State, employed as a captain of "lighters" by a lighterage company, a New York corporation, with its principal place of business in New York city, who, while engaged in unloading merchandise from the lighter to horse trucks in Jersey City, in the State of New Jersey, was struck by a bag hook, comes within the provisions of group 8. The captain of a "lighter" may fairly be said to be engaged in its "operation" continuously from the beginning to the end of a round trip, including the loading and unloading of the craft, so long as he works upon it. As the employer and owner of the lighter was a New York corporation, the presumption is that the vessel was not one of another State or country used in interstate or foreign commerce, and the right of the claimant to recover should not be defeated by his failure to show such fact. *Edwardsen v. Jarvis Lighterage Co.* (1915), 168 App. Div. 368, 153 N. Y. Supp. 391.

Liability of special employer; effect.—A general employer is liable where the injury occurs within the lines of the general employment and the liability is not destroyed by the fact that a special employer may also be liable, thus giving the employee a choice of remedies with but one compensation. *Dale v. Saunders Brothers* (1916), 171 App. Div. 528, 157 N. Y. Supp. 1062, *affd.* 218 N. Y. 59.

The general employer who carries on a hazardous employment for pecuniary gain is liable for injuries sustained or death incurred by his employees in the course of and during their employment, although at the time they are away from the plant and to some extent under the direction of another than the employer who pays their wages. *Dale v. Saunders Brothers* (1916), 218 N. Y. 59, *affg.* 171 App. Div. 528, 157 N. Y. Supp. 1062.

Where a proprietor of a sand pit hired a team and teamster from a manufacturer of brick to draw sand from the pit and while the teamster was loading the wagon the sand bank fell, fatally injuring him, he is entitled to the protection of the Workmen's Compensation Law and either the proprietor of the sand pit, the special employer, or the brickmaker, the general employer, may be held liable. The fact that the special employer may be held liable does not absolve the brickmaker, the general employer, from liability. *Dale v. Saunders Brothers* (1916), 171 App. Div. 528, 157 N. Y. Supp. 1062, *affd.* 218 N. Y. 59.

Independent contractor not entitled to award.—Where the owner of a dredge entered into a written lease thereof, whereby the lessee was to pay the claimant

for the use of the dredge and the commissary department connected therewith a certain sum per month, and in addition a certain sum per cubic yard for material excavated, to be computed monthly, the lessor to pay for all repairs to the dredge and the lessee to pay the wages of the crew and the costs of the commissary department and operating expenses, the lessor occupied the position of an independent contractor, especially as the contract provided that the lessee is not to use any other dredge so long as the dredge leased is sufficient to perform the work, and that neither party shall be liable for damage or loss caused by the default of the other, their agents or servants. Hence, it *seems*, that the owner of the dredge would not be entitled to an award under the State Workmen's Compensation Act for personal injuries sustained in the operation of the dredge, for the statute does not apply to independent contractors. But where such independent contractor was injured, not while engaged in operating the dredge, but by the backfiring of the engine of a motor boat furnished by the lessee to transport supplies to the dredge, he was not while so engaged an independent contractor, but an employee of his lessee within the meaning of the Workmen's Compensation Law, and hence is entitled to compensation under said act. *Powley v. Vivian & Co.* (1915), 169 App. Div. 170, 154 N. Y. Supp. 426.

Injury caused by another contractor.—The husband of claimant was employed by a contractor on work necessary in the construction of a building. While one of the employees of another contractor was engaged in excavating for the same building, the bank of the excavation caved in and he was caught about twenty feet from where claimant's decedent, who went to the assistance of the endangered employee, was at work. While attempting to release him, another cave-in occurred and claimant's husband suffered such severe injuries that he subsequently died therefrom. It was *held*, that the accident arose out of and in the course of the decedent's employment and that an award for his death should be sustained. *Waters v. Taylor Co.* (1916), 218 N. Y. 248.

"Longshore work."—An employee of a contractor engaged in searching for rags among the rubbish delivered by wagons at a city dump at the foot of a street, not for the purpose of preparing the refuse for shipment, and not having anything to do with the removal thereof, is not engaged in "longshore work" which is declared to be a hazardous employment by group 10 of section 2. *Tomassi v. Christensen* (1916), 171 App. Div. 284, 156 N. Y. Supp. 905.

Where one employed by a gas company and required to assist in moving stoves and ranges in its building, and to and from its wagons, occasionally riding thereon to buildings occupied by customers of the company, was injured when the tail-board of the wagon from which he was removing a stove gave way and he fell, he was not engaged in "longshore" work within the meaning of section 2, group 10, of the Workmen's Compensation Law. *Guthell v. Consolidated Gas Co.* (1916), 94 Misc. 690, 158 N. Y. Supp. 622.

Injury to employee while assisting in driving sheeting; "pile driving."—An employee, assisting in driving sheeting to be used in a jetty to extend into the ocean for the protection of baths on the water front, the sheeting being a form of piling, will be deemed to have been engaged in "pile driving" within the meaning of group 11. The fact that the employee, at the moment he met with the injury resulting in his death, may have been engaged in performing a physical act more approximately incident to the making of the sheeting than to the driving of it into the sand, does not require a reversal of an award. *Mazzarisi v. Ward & Tully* (1916), 170 App. Div. 868, 156 N. Y. Supp. 964.

Manufacture of glass; injury while handling plate glass.—The Commission is justified in making an award under group 20 relating to the manufacture of glass products, porcelain and pottery to a claimant who was injured while handling plate glass on mere proof that he was injured in such occupation. The burden of show-

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ing that the claimant was not engaged in a hazardous employment in that at the time of injury he was merely packing glass which had been sold to a customer, an ordinary occupation, is upon the employer and its surety opposing the award. *McQueeney v. Sutphen & Myer* (1915), 167 App. Div. 528, 153 N. Y. Supp. 554.

Selling glassware.—The manufacture of glass, glass products, glassware, porcelain or pottery is covered by group 20; but that group does not extend far enough to include the business of selling glassware, and an employee who is engaged in that business is not within its provisions. *Wilson v. Dorfing & Sons* (1916), 218 N. Y. 84, revg. 170 App. Div. 119, 155 N. Y. Supp. 857.

A janitor employed by a company operating apartment buildings and who was also placed in charge of repairs to the buildings so far as he was personally able to make them, who slipped and fell from a ladder while ascending to a roof to do work upon a flag pole, was not, at the time, engaged in a "hazardous employment" and is not entitled to compensation for the injuries received. *Gleisner v. Gross & Herbener* (1915), 170 App. Div. 37, 155 N. Y. Supp. 946.

Injury to employee of drug and chemical company; fall down elevator shaft.—A person employed as a porter, elevator man and general utility man by a drug company engaged in manufacturing and selling drugs and chemicals, who while engaged in placing a shelf near an elevator well fell down the shaft, may be found to have been engaged in a hazardous employment and is entitled to an award. *Larsen v. Paine Drug Co.* (1915), 169 App. Div. 838, 155 N. Y. Supp. 759, *affd.* 218 N. Y. 252, in which it was *held*, that in the absence of substantial evidence to the contrary, the compensation commission was entitled to presume that the employer was engaged in the hazardous business of manufacturing drugs and chemicals as defined in group 28 of section 2 of the Workmen's Compensation Law (L. 1914, ch. 41), and, the employee having been killed while engaged in work fairly incidental to the prosecution of the business and appropriate in carrying it forward and providing for its needs, an award was properly made.

Owning and operating buildings.—The business of owning and operating a loft building is not one of the hazardous employments embraced within the terms of the Workmen's Compensation Law. *Chapelle v. Four Hundred and Twelve Broadway Co.* (1916), 218 N. Y. — (mem.), revg. — App. Div. —.

The business of owning and operating apartment houses is not a hazardous employment under the Workmen's Compensation Law. *Sheridan v. Groll Construction Co.* (1916), 218 N. Y. — (mem.), revg. — App. Div. —.

Cutting up meat not hazardous employment.—A butcher or assistant chef employed at a hotel to cut up and prepare meat for delivery to cooks as ordered, is not engaged in a hazardous occupation within the meaning of the Workmen's Compensation Act, which does not cover the ordinary preparation of food for cooking purposes. Hence, where the death of such butcher was caused by a wound from a knife accidentally received while he was preparing meat, his widow is not entitled to an award under the statute. *De La Gardelle v. Hampton Co.* (1915), 167 App. Div. 617, 153 N. Y. Supp. 162.

The making of sausage meat by means of an electric meat chopper is a hazardous employment within the meaning of group 30, relating to the preparation of meats and meat products. An employer and his surety, contesting an award to an employee, is under the burden of showing that at the time of the injury the employee was not working at a hazardous employment, if such be the contention. Hence, in the absence of such proof on the part of the employer, the Workmen's Compensation Commission is justified in finding that one who was employed by a retail butcher and was injured while operating an electric meat chopper was at the time engaged in a hazardous employment. *Kohler v. Frohmann* (1915), 167 App. Div. 533, 153 N. Y. Supp. 559.

Driver of meat delivery wagon injured while making delivery on foot not entitled

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to compensation.—Where a person employed to drive a meat delivery wagon and to act both as driver and delivery man after he had stopped delivering with the horse and wagon for the day was injured during the evening by falling on a pail of broken glass while on his way on foot to deliver a package of meat and arrange for the preparation and care of a dressed hog, the injuries cannot be held to have arisen out of his employment as a driver or incidental to such employment. *Newman v. Newman* (1915), 169 App. Div. 745, 155 N. Y. Supp. 665.

A teamster drawing sand from a pit is engaged in hazardous employment within the meaning of groups 19 and 41 of section 2 of the Workmen's Compensation Law. *Dale v. Saunders Brothers* (1916), 171 App. Div. 528, 157 N. Y. Supp. 1062, *affd.* 218 N. Y. 59.

The operation of a wagon or truck referred to in group 41 of section 2 of the Workmen's Compensation Law is not confined merely to the moving vehicle, but relates to anything incident to the employment such as the loading and unloading of the wagon, the necessary care and attention to the wagon and horse. Any act which falls within the duty of the teamster as such is within the protection of the statute. *Dale v. Saunders Brothers* (1916), 171 App. Div. 528, 157 N. Y. Supp. 1062, *affd.* 218 N. Y. 59.

Injury while cleaning motor cycle; property of employee used in master's business.—An employee who was injured while cleaning a motor cycle which, although owned by him personally, he used in his master's business with his knowledge and consent, is entitled to an award. *Kingsley v. Donovan* (1915), 169 App. Div. 828, 155 N. Y. Supp. 801.

Injury to purchasing agent traveling for storage company; when employee not entitled to compensation.—Although an employer engaged in the business of storing fruits and produce is engaged in a hazardous business within the meaning of the Workmen's Compensation Law, a person employed as a traveling agent, solely for the purpose of buying fruits, who was injured in an automobile accident while on a purchasing trip in a foreign State, is not entitled to compensation under the statute, for the work in which he was engaged had no connection with the storage business. *It seems*, however, that had the employee been injured while performing duties in connection with the storage business itself, he might be entitled to compensation. *Sickles v. Ballston Refrigerating Storage Co.* (1916), 171 App. Div. 108, 156 N. Y. Supp. 804.

Manufacturer of cheese; harvesting ice; operation not "hazardous."—One employed by a cheese manufacturer solely for the purpose of harvesting ice for use in the business, and who is not required to do any work in connection with the manufacture of cheese, is not engaged in a "hazardous employment" within the meaning of the Workmen's Compensation Law, and is not entitled to an award for the loss of fingers which were frozen while he was engaged in his employment. *Aylesworth v. Phoenix Cheese Co.* (1915), 170 App. Div. 34, 155 N. Y. Supp. 916.

"Garbage disposal plant."—The mere dumping of refuse, which may contain material valuable as a fertilizer, does not make the dump a "garbage disposal plant" within the meaning of group 28 of section 2, and an employee engaged in searching for rags and other articles of value among the rubbish is not employed in the manufacture of fertilizers or upon a garbage disposal plant connected with such manufacture within the meaning of said group. *Tomassi v. Christensen* (1916), 171 App. Div. 284, 156 N. Y. Supp. 905.

"Warehousing" defined; injury to employee of produce merchant.—An employer in order to be engaged in "warehousing" within the meaning of the Workmen's Compensation Law, must be engaged in storing goods "for pecuniary gain." Hence, an employer in the wholesale business who, in connection therewith, maintains a place in which to store his goods is not engaged in warehousing within the meaning of the statute and an employee, whose hand was injured while tiering

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barrels, is not entitled to an award. *Mihm v. Hussey* (1915), 169 App. Div. 742, 155 N. Y. Supp. 860.

Injuries while operating "vehicles."—*It seems*, that groups 1 and 41 embrace the operation of every kind of vehicle using steam, electricity or other motive power. *Wilson v. Dorfing & Sons* (1915), 170 App. Div. 119, 155 N. Y. Supp. 857.

Freight elevator a vehicle.—A freight elevator used by such employer in his business in selling glassware is a "vehicle," within the meaning of group 41, and hence, where an employee who is required to use the elevator accidentally fell down the shaft and was killed, those dependent upon him are entitled to an award under the statute. *Willson v. Dorfing & Sons* (1915), 170 App. Div. 119, 155 N. Y. Supp. 857.

Injury to teamster while putting horse in stall.—A teamster employed by a person carrying on the "business of carting and dray work" who, after operating a truck during the day, returned to the stable and was fatally injured while he was putting his horse into the stall, must be deemed to have met his death in the course of his employment of operating the truck within the meaning of group 41. The benefit of the statute is not limited to the actual time that the horse is moving or that the employee is upon the truck. It covers every injury or death received in the course of the employment. The loading and unloading of the truck, hitching and unhitching of the horse, feeding and caring for the horse, are a part of the employment of operating the truck and are fairly within the provisions of the statute. *Smith v. Price* (1915), 168 App. Div. 421, 153 N. Y. Supp. 221.

Unintentional injury by co-employee.—Claimant, employed as a driver by a brewing company, brought his horses into the stable where a fellow-workman proceeded to wash them off with a hose. Claimant told his fellow-workman that he was using too much water on the horses, when such workman intentionally sprinkled some water on claimant, who then left the place. Shortly afterward claimant, returning to his work, met the other workman and as he passed touched him on the shoulder, saying, "George, don't do that again." The latter slapped claimant on the shoulder, and as claimant turned around a finger of the other man stuck in claimant's left eye, causing injuries by reason of which it was necessary to remove the eye. *Held*, that the evidence is sufficient to permit the commission to find that the accident (a) arose out of and (b) in the course of employment, and, hence, the award to claimant by the compensation commission was properly affirmed by the Appellate Division. *Heltz v. Ruppert* (1916), 218 N. Y. 148.

Stableman injured by horse falling on him.—It is the *business of operating wagons* drawn by horses that is intended to be covered by the act and not the mere steering of a wagon or handling the reins while driving a horse attached to a wagon. Hence a stableman, employed and engaged in his work as such in the stable of an express company, who was injured by a horse slipping and falling on him while taking it from a stall, was engaged in a hazardous employment and is entitled to compensation for the injuries so received. *Costello v. Taylor* (1916), 217 N. Y. 179.

DECISIONS OF WORKMEN'S COMPENSATION COMMISSION.

a. Cases in which awards have been made.

Decisions of Compensation Commission; cases in which awards have been made.

Railroad and other traffic employees.—Injury to locomotive fireman by falling from cab of engine. *Kester v. Erie R. R. Co.* (1915) 5 State Dep. Rep. 368. Injuries to a trackman by a piece of stone hitting him in the eye. *Oliveri v. Erie R. R. Co.* (1915) 5 State Dep. Rep. 378. Injury to trackman by piece of steel striking him in the eye. *Grippio v. N. Y. C. R. R. Co.* (1915) 5 State

Dep. Rep. 403. Death of track walker struck by train. Quattrini v. Del. & H. R. R. Co. (1915) 5 State Dep. Rep. 393. Injury to freight handler by slipping between car and platform and having heavy plank fall upon him. Brandt v. N. Y. C. & H. R. R. Co. (1915) 6 State Dep. Rep. 332. Section hand struck by freight train and killed while ballasting track. Drake v. N. Y. C. R. R. (1915) 6 State Dep. Rep. 353. Injury to freight handler while carrying gang planks by co-employees letting go of plank which dropped and crushed his finger. Petrowsky v. Lehigh Valley R. R. Co. (1915) 6 State Dep. Rep. 360. Plumber employed by railroad company, struck and killed by train while crossing tracks in connection with his employment. Vollmers v. N. Y. C. R. R. Co. (1915) 6 State Dep. Rep. 370. Injury to a laborer while riding to work on top of car, who became dizzy from gases while passing through a tunnel and fell from the car. Caccavano v. N. Y., Ont. & W. R. R. Co. (1915) 6 State Dep. Rep. 380. Injury to locomotive fireman by cinder lodging in his eye. Nelson v. N. Y. C. R. R. Co. (1915) 6 State Dep. Rep. 395. Injury to locomotive engineer while leaning from cab by being struck by a roof board projecting from a car on adjoining track. Bates v. Del. & H. R. R. Co. (1916) 6 State Dep. Rep. 404. Injury to track laborer by falling from hand-car. Liberti v. Staten Island Railway Co. (1916) 6 State Dep. Rep. 406. Injury to section foreman by piece of steel flying into his eye. Slintz v. Erie R. R. Co. (1916) 6 State Dep. Rep. 407. Injury to checker and handler of freight by collapse of runway on which he was wheeling a truck. Henchen v. Lehigh Valley R. R. Co. (1915) 5 State Dep. Rep. 401. Injury to employee while cleaning ashes from locomotive which suddenly backed upon him. Penda v. N. Y. C. R. R. Co. (1916) State Dep. Rep. No. 38, p. 73. Death of trainman run over by cars which he had been ordered to control after their release. Tiernan v. Staten Island Rapid Transit Railway Co. (1916) State Dep. Rep., Adv. Sheet No. 38, p. 71. Injury to fireman by being struck by a piece of coal. Prokoplak v. Buffalo Gas. Co. (1916) State Dep. Rep., Adv. Sheet No. 39, p. 53. Injury to section hand by slipping on ice and straining himself while lifting a rail. Ceraza v. Lehigh Valley R. R. Co. (1916) State Dep. Rep., Adv. Sheet No. 39, p. 60. Injury to laborer engaged in removing old rails from track by being struck in the eye by a piece of steel. Ruglere v. N. Y. C. R. R. Co. (1916) State Dep. Rep., Adv. Sheet No. 39, p. 64. Injury to freight handler by barrel falling upon his foot. Blui v. Lehigh Valley R. R. Co. (1915) 5 State Dep. Rep. 407. Injury to laborer while loading rails on a truck by one of the rails slipping and crushing his hand. Hook v. Lehigh Valley R. R. Co. (1915) 5 State Dep. Rep. 410; Sorgi v. Penn. R. R. Co. (1915) 5 State Dep. Rep. 408. Injury to laborer unloading freight by gang plank falling on his foot. Rutigliania v. Penn. R. R. Co. (1915) 5 State Dep. Rep. 412. Death of night watchman by being struck by train. Striebich v. Nichol Plate R. R. Co. (1915) 5 State Dep. Rep. 420. Injury to track laborer by derailing of hand car on which he was riding. Salvazio v. Lehigh Valley R. R. Co. (1915) 5 State Dep. Rep. 433. Trackman sustained injury to eye by piece of stone becoming imbedded therein. Vezio v. Del. L. & W. R. R. Co. (1915) 4 State Dep. Rep. 414; Picol v. Lehigh Valley R. R. Co. (1915) 4 State Dep. Rep. 420. Injuries to trackman resulting from hand car catching fire, compelling him to jump therefrom. Potts v. Lehigh Valley R. R. Co. (1915) 4 State Dep. Rep. 421. Employee in freight yard accidentally run over by car shunted by switch engine. Desposito v. N. Y. C. R. R. Co. (1915) 4 State Dep. Rep. 415. Employee of railroad company struck by train while crossing track at request of foreman. Carini v. Nichol Plate R. R. Co. (1915) 4 State Dep. Rep. 423. Injuries to machinist while coupling tank to engine, by his left wrist being caught between the engine and the tender. Freeman v. Penn. R. R. Co. (1915) 4 State Dep. Rep. 426. Shop man while at work upon a derailed car, injured by falling over a wire. Faragher v. Penn. R. R. Co. (1915) 4 State Dep. Rep. 428.

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Car inspector injured by being struck by piece of steel from a hammer used by his assistant. *Faragher v. Penn. R. R. Co.* (1915) 4 State Dep. Rep. 430. Employee of railroad killed while attempting to catch on to moving train. *Avanzato v. Erie R. R. Co.* (1915) 4 State Dep. Rep. 397. Track inspector struck by passing train and killed. *Maduske v. New York, N. H. & H. R. R. Co.* (1915) 4 State Dep. Rep. 400. Track inspector while riding upon an engine leaned out of the cab to throw a note to his foreman and was struck by a water crane and killed. *Lawler v. Del. & H. R. R. Co.* (1915) 4 State Dep. Rep. 402. Section laborer while loading ties, caught his finger between a rail and the car. *Sullivan v. Lehigh Valley R. R. Co.* (1915) 4 State Dep. Rep. 406. Death of track laborer while under car to escape rain storm, which car was struck by another. *Franchi v. Del. L. & W. R. R. Co.* (1915) 6 State Dep. Rep. 399. Boiler maker employed by railroad company in repair shop slipped while carrying ash pan and crushed his fingers. *Graboske v. New York Central & Hudson River R. R. Co.* (1915) 4 State Dep. Rep. 326. Track laborer while assisting in unloading iron pipes from freight car was injured by one of the ties slipping from his hand. *Passe v. Del. L. & W. R. R. Co.* (1915) 4 State Dep. Rep. 328. Employee of railroad company while pushing a small truck was injured by one of the rails falling therefrom. *Koloski v. N. Y. C. & H. R. R. Co.* (1915) 4 State Dep. Rep. 330. Switchman killed by falling into gondola car. *Mosier v. Del. L. & W. R. R. Co.* (1915) 4 State Dep. Rep. 341. Section-hand injured by negligence of fellow workman in dropping a rail which broke his fingers. *Monteleon v. Del., L. & W. R. R. Co.* (1915) 4 State Dep. Rep. 354. Car inspector or repairer knocked from car and injured by another car striking the one on which he was riding. *Hoppa v. Erie R. R. Co.* (1915) 4 State Dep. Rep. 357. Employee of railroad company injured by piece of steel flying into his eye. *Trapani v. Erie R. R. Co.* (1915) 4 State Dep. Rep. 389. Engine wiper killed by clothes catching fire from lighted waste. *Sieplenska v. N. Y. C. R. R. Co.* (1915) 4 State Dep. Rep. 395. Trackman run down by train and killed. *Solle v. N. Y., N. H. & H. R. R. Co.* (1915) 4 State Dep. Rep. 393. Employee of railroad company while getting ice from icehouse accidentally fell into water on the floor and was suffocated. *Nako v. N. Y. C. & H. R. R. Co.* (1915) 4 State Dep. Rep. 387. Injury to baggage handler while operating a truck by being jammed against an elevator gate, the brakes of the truck failing to work. *Fitzsimmons v. Penn. R. R. Co.* (1915) 6 State Dep. Rep. 303. Death of conductor by falling from car. *Hill v. Del., L. & W. R. R. Co.* (1916) State Dep. Rep., Adv. Sheet No. 37, p. 109. Injury to carpenter employed by railroad company, by a traveling crane passing over his hand. *Sauter v. N. Y. C. R. R. Co.* (1915) 6 State Dep. Rep. 316. Injury to carpenter while inspecting and repairing car, by misjudging his step in getting off thereof, resulting in a severe strain. *Schrieber v. New York Central R. R. Co.* (1915) 6 State Dep. Rep. 331. Injury to a process server while returning to the office of his employer on one of its cars, by a fellow passenger stepping upon his foot, which injury resulted in gangreneous diabetes, causing death. *Brown v. Richmond Light & R. R. Co.* (1916) State Dep. Rep., Adv. Sheet No. 37, p. 97. Track laborer, while oiling rails, struck by passenger train and instantly killed. *Robbins v. Del. L. & W. R. R. Co.* (1916) State Dep. Rep., Adv. Sheet 41, p. 61. Track laborer who had taken refuge from a storm by crawling under a car on a side track, killed by another train backing upon the siding. *Piscante v. Del., L. & W. R. R. Co.* (1916) State Dep. Rep., Adv. Sheet 41, p. 63. An employee of an express company while attempting to shift a part of a load on the wagon was thrown to the pavement by a box falling upon him, resulting in his death. *Banks v. Adams Express Co.* (1916) State Dep. Rep., Adv. Sheet No. 42, p. 99. Injury to track laborer while cutting a rail by piece of steel striking him in

the eye. *Murphy v. N. J., & N. Y., R. R. Co.* (1916) State Dep. Rep., Adv. Sheet 41, p. 65.

Drivers of vehicles, etc.—Driver thrown from delivery wagon because mule became unruly and kicked. *Woodward v. Conklin & Son* (1915) 4 State Dep. Rep. 432. Injury to driver of delivery wagon by being thrown therefrom and run over, which injury resulted in death. *Blatt v. Schonberger and Noble* (1916) State Dep. Rep., Adv. Sheet No. 37, p. 111. Wagon driver, horses becoming startled, pulled from seat and skull fractured. *Nolan v. Crawford Co.* (1915) 4 State Dep. Rep. 337. Injury to driver of automobile truck while cranking same. *Brigeman v. McLoughlin* (1916) State Dep. Rep., Adv. Sheet No. 39, p. 62. Death of teamster resulting from poison by stepping on a rusty nail while getting into the wagon. *Putnam v. Murray* (1916) State Dep. Rep., Adv. Sheet No. 38, p. 76. Injury to driver of express wagon by being struck by an automobile as he crossed the street to make a delivery. *Miller v. Taylor* (1916) State Dep. Rep., Adv. Sheet No. 38, p. 66. Injury to driver of beer wagon by a keg of beer which he was taking into a cellar striking him on the chest, subsequently resulting in death. *Stadtmuller v. Ehret* (1915) 6 State Dep. Rep. 342. Injury to driver employed by florist while assisting in adjusting a window box. *Glatel v. Stumpp* (1915) 6 State Dep. Rep. 397. Injury to stableman by being kicked by a horse while hanging the harness on a stable post. *Rudewicz v. Wendell & Evans Co.* (1916) 6 State Dep. Rep. 408. Injury to helper on delivery wagon who slipped and fell while getting off therefrom. *Kossoff v. Macy & Co.* (1916) State Dep. Rep., Adv. Sheet No. 39, p. 67. Truck driver accidentally fell from a truck the rear wheel of which passed over his head, killing him. *Brisco v. Englert* (1915) 4 State Dep. Rep. 345. Driver of wagon kicked by horse which he passed while leading his team into a blacksmith shop. *Keneflick v. Laurer Brewing Co.* (1915) 4 State Dep. Rep. 350. Truck driver slipped and fell in getting off a truck and broke his leg. *Walters v. McGovern* (1915) 4 State Dep. Rep. 361. Deliveryman employed by grocer fell from wagon causing a rupture. *Thompson v. Vastbinder* (1915) 4 State Dep. Rep. 363. Death of foreman of boarding stable resulting from injuries sustained by slipping and falling on stairway. *Leslie v. O'Connor & Richman* (1915) 5 State Dep. Rep. 383. Death of teamster from delirium tremens and alcoholic meningitis, claimed to have developed from an injury to the claimant's leg, caused by a keg rolling from the wagon. *Dunn v. West End Brewing Co.* (1915) 5 State Dep. Rep. 380. Injury to chauffeur by overturning of automobile caused by his turning out to pass team. *Matter of Kennedy* (1916) State Dep. Rep., Adv. Sheet No. 41, p. 53. Injury to taxicab starter by slipping on a rubber mat and falling down steps. *David v. Town Taxi Co.* (1916) State Dep. Rep., Adv. Sheet 41, p. 67.

Injury to longshoreman who, while operating a steam winch in the loft of a pier, became entangled in the rope. *Albin v. Red Star Line* (1915) 5 State Dep. Rep. 367. Injuries to longshoreman while unloading lumber from a barge. *Mastermaker v. Penn. R. R. Co.* (1915) 5 State Dep. Rep. 370. Death of longshoreman by falling into hold of steamer. *McTiernan v. International Elevating Co.* (1915) 5 State Dep. Rep. 377. Injury to longshoreman while engaged in loading a barge by slipping from a glycerine drum on which he had been ordered to stand. *McGuire v. Lehigh Valley R. R. Co.* (1915) 5 State Dep. Rep. 406. Injury to longshoreman while unloading vessel, by fall swinging and striking him in the eye. *Benedict v. International Mercantile Marine Co.* (1915) 5 State Dep. Rep. 411. Longshoreman injured by a box on a truck striking the door of a lighter throwing him in such a position as to catch his foot between the lighter and the dock, thereby spraining his ankle. *Hall v. Lehigh Valley R. R. Co.* (1915) 4 State Dep. Rep. 441. Longshoreman crushed while assisting in stowing automobile on ship. *McNeill v. Oceanic Steam Navigation Co.* (1915) 4 State

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Dep. Rep. 335. Longshoreman injured by lumber falling from truck on his foot. *Broderick v. Southern Pacific Co.* (1915) 4 State Dep. Rep. 371.

Salesmen and mercantile employees.—Injury to salesman and superintendent while superintending the forging of steel, by being struck by a drift pin. *Tompkins v. Darwin & Miller* (1915) 6 State Dep. Rep. 325. Injury to salesman by collision of bus in which he was riding, with a wagon loaded with coal. *Mandle v. Steinhart & Bro.* (1915) 6 State Dep. Rep. 390. Injuries to salesman and stock-keeper, caused by the collapse of a step-ladder on which he was standing while examining stock. *Berliner v. Ritchie & Cornell* (1915) 4 State Dep. Rep. 446. Injuries to purchasing and sales agent by automobile in which he was riding while in another State inspecting and buying fruits, turning over. *Sickles v. Ballston Refrigerating Storage Co.* (1915) 5 State Dep. Rep. 382. Injury to salesman of machinery company, by piece of machinery which he was demonstrating, accidentally falling upon his foot. *Benton v. Fraser* (1915) 5 State Dep. Rep. 392. Sales manager while ascending stairs, accidentally tripped and fell backwards, sustaining injuries resulting in death. *Nickolson v. Klipstein & Co.* (1915) 4 State Dep. Rep. 412. Salesman while engaged in soliciting orders fractured his wrist while cranking automobile. *Markham v. United Breeders' Co.* (1915) 4 State Dep. Rep. 390. Injury to employee by tripping and falling over a parcel on the floor. *Gray v. DeJong* (1915) 5 State Dep. Rep. 404. Injury to shipping clerk by pricking his finger, resulting in infection. *Burton v. Whelen & Sons* (1915) 5 State Dep. Rep. 395. Injury to employee by slipping and falling on stone floor. *Lyon v. Windsor & Davis* (1915) 5 State Dep. Rep. 389. Injury to model from pin prick, while trying on unfinished garment, resulting in infection. *Bloomfield v. November* (1915) 5 State Dep. Rep. 385. Injury to employee in upholstery department while going from one work table to another, by a board falling against her. *McManus v. Lord & Taylor* (1915) 6 State Dep. Rep. 393. Death of night watchman by drowning. *Contrafatto v. Spooner & Son* (1916) State Dep. Rep., Adv. Sheet No. 42, p. 105.

Printing employees.—Injury to operator of power press, by his left hand accidentally slipping into the same. *Kanzar v. Acorn Mfg. Co.* (1915) 5 State Dep. Rep. 418. Injury to employee while feeding press by die of press catching his fingers. *Weith v. Elsemann Magneto Co.* (1916) State Dep. Rep., Adv. Sheet No. 38, p. 68. Injuries to power press operator, by catching his fingers between the die and the punch of the press. *Grammich v. Zinn* (1915) 5 State Dep. Rep. 400. Pressman employed by publishing company, accidentally collided with corner of press rack when light was dim, injuring his eye. *Boesenberg v. Butterick Pub. Co.* (1915) 4 State Dep. Rep. 367.

Elevator employees.—Elevator operator injured by walking into open shaft. *Miller v. Stern Bros.* (1915) 4 State Dep. Rep. 447. Injury to employee while operating elevator by being caught between floor of elevator and top of door. *North v. McCreery Realty Corp.* (1915) 6 State Dep. Rep. 329. Elevator operator while attempting to board elevator in motion, caught between floor of car and wall and killed. *Quirke v. Hotel Operating Associates* (1915) 4 State Dep. Rep. 381. Elevator man injured by falling on stairs as he left elevator. *Foley v. Bratton Hall Co.* (1915) 4 State Dep. Rep. 339. Injury to shipping clerk by falling into elevator shaft. *Garry v. Hardware Bargain House* (1915) 5 State Dep. Rep. 415. Death of care-taker by falling into elevator shaft. *Sterling v. Western Union Telegraph Co.* (1915) 5 State Dep. Rep. 445. Death of porter from injuries sustained while cleaning around running gears at top of elevator shaft. *Bellisario v. Hyde Real Estate Corp.* (1915) 6 State Dep. Rep. 357.

Structural iron workers.—Injury to iron worker, resulting in death, by breaking of chain while hoisting steel beams by means of a derrick. *Scheier v. Hebbard & Wentz* (1915) 5 State Dep. Rep. 409. Structural iron worker killed by falling

from girder while taking down iron beams. *Ziegler v. Cassidy's Sons* (1915) 4 State Dep. Rep. 343. Death of foreman of structural iron work, caused by his slipping and falling from a bridge. *Gardner v. Horseheads Construction Co.* (1915) 4 State Dep. Rep. 437.

Employee of meat company injured by fellow employee throwing tag fastener which struck him in the eye. *Kelleher v. Swift & Co.* (1915) 4 State Dep. Rep. 356. Injury to employee of butcher while sharpening knife under express instructions of his employer. *Wippelhauser v. Rohe & Bro.* (1915) 6 State Dep. Rep. 372. Injury to employee of meat company, who while unloading beef slipped and fell backward striking his head on the edge of a float. *Meyer v. Morris & Co.* (1915) 6 State Dep. Rep. 334.

Subway employees.—Death of gang foreman struck by train while leaving subway where he had been employed. *Di Paolo v. Crimmins Contracting Co.* (1915) 5 State Dep. Rep. 428. Death of employee in subway by falling into siphon or drainage hole. *Cino v. Morton & Gorman Contracting Co.* (1915) 5 State Dep. Rep. 387. Injury to digger in subway, by being struck on the head by a wooden beam which fell from above. *Petcheck v. Degnon Contracting Co.* (1915) 6 State Dep. Rep. 394.

Injury to stevedore who slipped and fell while pushing truck up a grade, severely straining himself, resulting in a rupture. *Nani v. Clark & Son* (1915) 6 State Dep. Rep. 382. Injury to stevedore while driving nail into car, by piece of coke striking him in the eye. *Dolan v. N. Y. C. R. R. Co.* (1915) 6 State Dep. Rep. 391.

Factory employees.—Machinist while rolling a fly-wheel, killed by the wheel slipping and catching him between it and the shaft. *Chase v. Fairbanks, Morse & Co.* (1915) 4 State Dep. Rep. 369. Employee engaged in selecting hides tripped over a bundle thereof and fell, sustaining a rupture. *Moore v. Harkin & Sons* (1915) 4 State Dep. Rep. 383. Sewing machine operator injured by finger becoming accidentally pierced with needle. *Feinman v. Albert Mfg. Co.* (1915) 4 State Dep. Rep. 365. Foreman of iron works, who was also the president, injured by iron channel falling on his foot and hand. *Koslowitzky v. Koslow Iron Works* (1915) 4 State Dep. Rep. 360. Injury to employee by being struck in the eye by a chip of steel from a chisel being used by another employee. *Galelli v. Magnesite Products Co.* (1916) State Dep. Rep., Adv. Sheet No. 39, p. 56. Death of watchman employed by National Biscuit Co. supposed to have been caused from a fall from a stairway. *Fogarty v. National Biscuit Co.* (1916) State Dep. Rep., Adv. Sheet No. 39, p. 55. Injury to machinist while cleaning machine by catching his hand in the gears. *O'Connell v. Modern Machine & Tool Co.* (1916) State Dep. Rep., Adv. Sheet No. 38, p. 65. Injury to coat maker while working in his own home, by the scissors slipping and cutting his finger. *Flocca v. Dillon* (1916) State Dep. Rep., Adv. Sheet No. 38, p. 69. Injury to the eye of an employee by piece of sandpaper breaking from a sand-paper wheel. *Grovman v. Grovman* (1915) 4 State Dep. Rep. 333. Apprentice injured by explosion of gas stove, resulting in his death. *Kilberg v. Vitch* (1915) 4 State Dep. Rep. 434. Laborer while wheeling a heavy load of iron on a wheelbarrow, in seeking to prevent the wheelbarrow from tipping over, severely wrenched his back, rupturing a muscle and nerve of the spine. *Sinclair v. Ramapo Iron Works* (1915) 4 State Dep. Rep. 418. Injury to employee while helping to pile heavy coils of wire on to a truck, by straining himself, resulting in a rupture. *Dougherty v. State Insurance Fund* (1915) 6 State Dep. Rep. 323. Injury to employee working on paper machine, by having his two hands caught between the hot cylinder rolls. *Carkey v. Island Paper Co.* (1915) 6 State Dep. Rep. 321. Injury to blacksmith's helper by a piece of steel striking him in the eye. *Saccoccio v. Bradley Contracting Co.* (1916) 6 State Dep. Rep. 410. Injury to boiler maker while

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caulking rivets by a chip from a rivet striking him in the eye. *Heinze v. Lehigh Valley R. R. Co.* (1915) 5 State Dep. Rep. 419. Injuries to employee while using a rip-saw. *Wanck v. Wyckoff & Son Co.* (1915) 5 State Dep. Rep. 414. Injuries to general helper of leather goods manufacturer, by catching his finger between the top plate of a press and die. *Itzikowitz v. Lakner* (1915) 5 State Dep. Rep. 398. Death of porter employed by piano company, resulting from severely straining himself while moving a piano. *Mooney v. Webber Piano Co.* (1915) 5 State Dep. Rep. 396. Injury to employee while sweeping floor by accidentally catching his hand in lathe. *Feinstein v. B. & L. Auto Lamp Co.* (1915) 6 State Dep. Rep. 358. Injury to stationery engineer who, while leaving the factory by a short cut, jumped over a pile of lumber and fell. *Bennett v. Russell & Sons Co.* (1916) 6 State Dep. Rep. 403. Stationery engineer injured by catching his finger between valve rod and governor. *Fillner v. Buffalo, Rochester & Pittsburgh R. R. Co.* (1915) 4 State Dep. Rep. 379. Press hand, employed by drop forge company, injured by placing his left hand on the side of a press, thereby causing amputation of one of the fingers, and a fracture of the second and third fingers, requiring the amputation of the third finger. *Leiser v. General Drop Forge Co.* (1916) State Dep. Rep., Adv. Sheet 42, p. 95. Injury to spinner while passing between two machines, by slipping and catching his left hand into the gearing of one of the machines. *Martin v. Roof Underwear Co.* (1916) State Dep. Rep., Adv. Sheet No. 42, p. 109. Injury to laborer in candy factory, who, while stooping near a conveyor slipped and his left hand and forearm was caught in the conveyor. *Naro v. Rueckheim Bros. & Eckstein* (1916) State Dep. Rep., Adv. Sheet No. 42, p. 112. Injury to employee while sawing lumber by a piece thereof striking him in the abdomen. *Rosenblatt v. Royal Table Co.* (1916) State Dep. Rep., Adv. Sheet 41, p. 59. Injury to employee of wood dealer, while assisting employee in engine house where he was delivering wood, in fixing elevator used to place the wood in the building. *Kasper v. Clark & Wilkins Co.* (1916) State Dep. Rep., Adv. Sheet 41, p. 57. Injury to employee by roll of paper falling from cart which he was pushing. *Conte v. Penn. R. R. Co.* (1916) State Dep. Rep., Adv. Sheet No. 41, p. 55.

Employees on construction work.—Injury to carpenter while repairing boat by falling overboard. *Chertkoff v. Schaeffer & Son* (1915) 5 State Dep. Rep. 423. Carpenter killed by collapse of building, resulting from fire. *Bargey v. Massaro Macaroni Co.* (1915) 4 State Dep. Rep. 373. Mason killed by cave-in. *Marianaro v. Arnone* (1915) 4 State Dep. Rep. 404. Bricklayer while going from one staging to another, was struck by an elevator and fell, fracturing his arm. *Williams v. Electric Car Barn Co.* (1915) 4 State Dep. Rep. 439. Plasterer slipped through a scaffold and fell, fracturing his collar bone. *Munro v. Davis Brown, Inc.* (1915) 4 State Dep. Rep. 408. Laborer injured while putting stones into stone crusher. *Dolici v. Myers Contracting Co.* (1915) 4 State Dep. Rep. 376. Injury to night watchman employed by a contracting company, by stumbling over some object in a dark shanty. *Birn v. Bradley Contracting Co.* (1915) 6 State Dep. Rep. 319. Injury to laborer while loosening strippings from the ceiling by a beam falling upon him. *Sullivan v. Industrial Engineering Co.* (1915) 6 State Dep. Rep. 401. Death of employees while inside drum of stone crusher which was started without the knowledge of their presence. *De Gazio v. Kerbaugh* (1915) 6 State Dep. Rep. 373.

Miscellaneous employments.—Assistant foreman of laborers stumbled over an obstruction in the street, sustaining injuries resulting in death. *Collins v. Brooklyn Union Gas Co.* (1915) 4 State Dep. Rep. 449. Injury to laborer while lifting bag resulting in rupture. *Staat v. American Malting Co.* (1916) State Dep. Rep., Adv. Sheet No. 37, p. 99. Employee while engaged as log loader, froze his toe, necessitating amputation. *Linck v. Millard* (1915) 4 State Dep. Rep. 385. Injury

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to superintendent of department house by collapse of ladder. (1916) State Dep. Rep., Adv. Sheet No. 39, p. 69. Injury to engineer on lighter by bursting of steam pipe. Kelinklaus v. Wright & Cobb Lighterage Co. (1916) State Dep. Rep., Adv. Sheet No. 38, p. 61. Injury to watchman while ascending ladder from hold of ship. Rodgers v. Oceanic Steam Nav. Co. (1916) State Dep. Rep., Adv. Sheet No. 38, p. 63. Injury to baker by crushing his finger between barrels. Schramm v. Beck (1916) State Dep. Rep., Adv. Sheet No. 38, p. 75. Ice harvester, while tamping ice with a steel tamp, his mitts accidentally becoming wet, froze his fingers. Cole v. Callahan & Sperry (1915) 4 State Dep. Rep. 348. Employee while attempting to get away from a blast about to be set off, tripped on some stone and fell, sustaining internal injuries resulting in death. Catardi v. Bridgeport Contracting Co. (1915) 4 State Dep. Rep. 410. Death of floatman by drowning. Tirre v. Bush Terminal Co. (1915) 5 State Dep. Rep. 427. Scow trimmer while walking from a barge to a dump fell from a plank injuring his leg. Chioccarillo v. Marrone (1915) 4 State Dep. Rep. 352. Injury to employee by piece of stone striking him in the eye. Marinaccio v. Flinn-O'Rourke Co. (1915) 6 State Dep. Rep. 318. Death of an employee from taking at the direction of his foreman chloride of barium, thinking it to be epsom salts. O'Neil v. Carley Peter Co. (1915) 6 State Dep. Rep. 314. Injury to freight handler by losing his balance and falling while engaged in moving a case of goods by means of a catch-hook. Coughlin v. Penn. R. R. Co. (1915) 6 State Dep. Rep. 313. Injury to fireman by tripping and falling while wheeling ashes. Caruso v. Dunwoody Ice Co. (1915) 5 State Dep. Rep. 422. Injuries to soda water dispenser by breaking of glasses which he was washing. Paulson v. Schlumbohm (1915) 5 State Dep. Rep. 376. Insanity of motorman resulting from injuries sustained in collision. McMahon v. Interborough Rapid Transit Co. (1915) 5 State Dep. Rep. 371, 374. Death of employee from lock-jaw, resulting from stepping on a nail while shoveling dirt into a wagon. Putnam v. Murray (1915) 6 State Dep. Rep. 355. Injury to watchman who, in the dark, stumbled and fell against a piece of iron. Oberg v. McRoberts & Co. (1915) 6 State Dep. Rep. 386. Injury to an employee who, while trimming skins, stooped down to pick one from the floor and struck his cheek against a beam and became infected with anthrax. Henry v. Levor & Co. (1915) 6 State Dep. Rep. 388. Injury to janitor of department house by splinter of wood flying into his eye while he was preparing fuel for the boilers. Seigreth v. Goldberg (1916) State Dep. Rep., Adv. Sheet 41, p. 56. Injury to porter while driving nail into case of goods, by striking the index finger of his right hand with a hammer. Yamin v. Harris Raincoat House (1916) State Dep. Rep., Adv. Sheet No. 42, p. 113. Injury to lumberman while cutting trees by a falling limb fracturing his skull. Claremont Co. v. DeCoss (1916) State Dep. Rep., Adv. Sheet 41, p. 66. Injury to employee of butcher, while grinding meat by catching the middle finger of his left hand in the chopper. Pietha v. Murdter (1916) State Dep. Rep., Adv. Sheet No. 42, p. 110. Injury to employee by explosion while painting inside of tank car. Moquin v. Robeson Process Co. (1916) State Dept. Rep., Adv. Sheet No. 42, p. 107.

b. Cases in which awards have been denied.

Injury to employee while handling hinds of beef, by being crushed against the side of a truck. Evidence held insufficient to establish that the accident resulted in a rupture and subsequent death, and that an award should be denied. Hyland v. Winant (1915) 6 State Dep. Rep. 304. Death of night watchman. Evidence held insufficient to establish that the deceased had an accident. Butler v. Sheffield Farms (1915) 6 State Dep. Rep. 368. Death of a night watchman and night elevator man found in unconscious condition. Award denied, there being no proof that deceased was injured while actually operating the elevator. Fitzsimmons v. Wadsworth (1915) 6 State Dep. Rep. 351. Injury to employee during noon hour at some dis-

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tance from the employer's premises held not to have arisen out of and in the course of his employment. *Sokol v. Clyde Steamship Co.* (1915) 6 State Dep. Rep. 339. Claim by a conductor on a street railway disallowed upon the ground that there was no convincing proof that the claimant was injured at the time and in the manner claimed. *Graf. v. Brooklyn Rapid Transit Co.* (1916) State Dep. Rep., Adv. Sheet No. 37, p. 105.

The State of New York, through the Commission of Highways, is not engaged in business for pecuniary gain, within the meaning of the statute. *Allen v. State of New York* (1915) 6 State Dep. Rep. 376.

The Department of Public Works of the State of New York in repairing locks on the canal, is not engaged in a hazardous business for pecuniary gain, within the meaning of the Workmen's Compensation Law, and hence a carpenter injured by a splinter from a hammer striking him in the eye while employed by such department, is not entitled to an award. *Jennings v. Department of Public Works* (1915) 5 State Dep. Rep. 416.

An employee who has finished his work is under the Act until he has completely left the plant or at least has had sufficient time to leave it and come upon a public highway or upon a place entirely disassociated from the plant. Where an employee after completing his work, left the plant apparently to return to his home, and instead of using the private road started to walk on the railroad tracks and was struck and instantly killed, the accident cannot be deemed to have arisen out of and in the course of his employment. *Hotaling v. Standard Oil Co.* (1915) 6 State Dep. Rep. 308.

A painter who, while going from his work to the office of his employer, where he was required to report before going home, jumped upon a passing truck and was thrown therefrom by a sudden jolt and injured, is not entitled to an award, as the accident did not arise out of his employment. *It seems*, however, that if he had taken a street car and received an injury in consequence, or had suffered an injury while crossing the street, or passing along the sidewalk, he might have been entitled to an award. *Peers v. De Carlon & Co.* (1915) 5 State Dep. Rep. 425.

The general rule that accidents which happen while a workman is going to and returning from work are not considered incidental to the employment, does not apply where the workman is required to be upon the street in the performance of his work. *Peers v. De Carlon & Co.* (1915) 5 State Dep. Rep. 425.

§ 3. **Definitions.**—As used in this chapter, 1. "Hazardous employment" means a work or occupation described in section two of this chapter.

2. "Commission" means the state industrial commission, as constituted by this chapter.

3. "Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation, employing workmen in hazardous employments including the state and a municipal corporation or other political subdivision thereof.

4. "Employee" means a person engaged in one of the occupations enumerated in section two or who is in the service of an employer whose principal business is that of carrying on or conducting a hazardous employment upon the premises or at the plant, or in the course of his employment

away from the plant of his employer; and shall not include farm laborers or domestic servants.

5. "Employment" includes employment only in a trade, business or occupation carried on by the employer for pecuniary gain, except where the employer and his employees have by their joint election elected to become subject to the provisions of this chapter as provided in section two.

6. "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this chapter, and includes funeral benefits provided therein.

7. "Injury" and "personal injury" mean only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally and unavoidably result therefrom.

8. "Death" when mentioned as a basis for the right to compensation means only death resulting from such injury.

9. "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including the reasonable value of board, rent, housing, lodging or similar advantage received from the employer.

10. "State fund" means the state insurance fund provided for in article five of this chapter.

11. "Child" shall include a posthumous child and a child legally adopted prior to the injury of the employee; and a step-child dependent upon the deceased.

12. "Insurance carrier" shall include the state fund, stock corporations or mutual associations with which employers have insured, and employers permitted to pay compensation directly under the provisions of subdivision three of section fifty.

13. "Manufacture," "construction," "operation" and "installation" shall include "repair," "demolition" and "alteration." (*Re-enacted by L. 1914, ch. 41, and amended by L. 1914, ch. 316, and L. 1916, ch. 622, in effect June 1, 1916.*)

"Employee"; what constitutes.—In determining who is an "employee" within the meaning of the Workmen's Compensation Law, only decisions under this or similar laws, enacted to carry out the legislative purpose that accidents sustained by those who do the work of an industry shall be borne by the industry and paid for by its patrons and not left to fall upon the disabled worker or dependent widow and children, can be recognized as controlling. *Rheinwald v. Builders' Brick & Supply Co.* (1915), 168 App. Div. 425, 153 N. Y. Supp. 598.

A motorman employed by a street railway company who, after finishing his work for the day, was struck by an automobile as he was hurrying from the car barn to catch a car to the city to have his watch tested, in compliance with the rules of his employer, was not at the time of the accident an "employee," within the meaning of the Workmen's Compensation Law. *DeVoe v. New York State Railways* (1915), 169 App. Div. 472, 155 N. Y. Supp. 12.

A painter employed by a builders' brick and supply company to repaint a sign which he had before painted, used by them in advertising their business, who while at work slipped from the scaffold in some accidental manner and was

fatally injured, will be deemed to be an "employee" within the meaning of the Workmen's Compensation Law, and not an independent contractor, where it appears that he had no employees, made no subcontracts and did the work personally, and that, although he was doing the work in question under a written contract with his employer, it did not appear but what the employer retained control over the work. *Rheinwald v. Builders' Brick & Supply Co.* (1915), 168 App. Div. 425, 153 N. Y. Supp. 598.

An officer of a corporation even though he be a majority stockholder is still an "employee" within the meaning of the statute. *Kennedy v. Kennedy Mfg. and Engineering Co.* (1916) State Dep. Rep., Adv. Sheet No. 37, p. 107.

One employed as a "helper" on an automobile truck used to deliver groceries, who was killed by a fall when he jumped off the truck in order to drive off boys who were hanging to the rear of the vehicle and who refused to get off, was engaged, at the time, in the operation of the truck, and his death arose out of and in the course of his employment, so that those dependent upon him are entitled to compensation. *Hendricks v. Seeman Bros.* (1915), 170 App. Div. 133, 155 N. Y. Supp. 638.

Carpenter employed by the hour to make repairs by one not engaged in a hazardous business not "employee."—A carpenter, employed by the hour by a company engaged in manufacturing macaroni, to make repairs and improvements to one of its buildings, and not in any way connected with his employer's business, is not an "employee" engaged in a hazardous business within the meaning of the Workmen's Compensation Act. *It seems*, however, that if an employer engaged in a hazardous business uses his regular employees in doing something which may not be a hazardous employment in itself, but the work is a part of his general employment and incident to it, injuries to such an employee may be held to have been sustained while engaged in a hazardous employment. *Bargey v. Massaro Macaroni Co.* (1915), 170 App. Div. 103, 155 N. Y. Supp. 1076.

Injury by sportive act of fellow-servant; injury not arising out of employment.—Where an employee, engaged in the manufacture of shirts, etc., having repaired to the toilet, was struck in the eye with scissors which were thrust through a partition from an adjoining toilet by a fellow-servant as a practical joke, the injury, although accidental, cannot be said to have "arisen out of" the employment within the meaning of the Workmen's Compensation Law, and the employee is not entitled to a award. *De Filippis v. Falkenberg* (1915), 170 App. Div. 153, 155 N. Y. Supp. 761.

"Death" resulting from injury.—Where the inquiry by the Commission on the cause of the death of a decedent has been thorough and skillful, its award will not be vacated, although the injury would not have caused death but for antecedent conditions, and the injury may have been but one of the concurring causes set in motion thereby. *Mazzarisi v. Ward & Tully* (1916), 170 App. Div. 868, 156 N. Y. Supp. 964.

Death resulting from poison by ivy.—The dependent of a section laborer employed by a railroad company, who, while mowing grass on the employer's right of way, was poisoned by ivy so severely that it resulted in blood poisoning which led to congestion of the lungs and death, is entitled to an award under the Workmen's Compensation Law. *Plass v. Central New England Railway Co.* (1915), 169 App. Div. 826, 155 N. Y. Supp. 854.

Paralytic stroke held not to have been caused by injury received by operator of compressed air drill. *Mohr v. Cranford* (1916) State Dep. Rep., Adv. Sheet No. 37, p. 100.

Death of employee from pneumonia, held not to have resulted from a previous injury to his finger, upon the ground that the injury reduced his physical powers to resist the disease. *Stanley v. Wood* (1915) 6 State Dep. Rep. 383.

L. 1916, ch. 622.

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Blood poisoning resulting in death held not to have resulted from injury sustained by being hit on the nose by an article which the deceased was handling. *Partridge v. Norwich Pharmacal Co.* (1915) 6 State Dep. Rep. 336.

Death of employee by drowning, held not to have arisen out of or in the course of his employment. *McManus v. Macky & Co.* (1915) 6 State Dep. Rep. 344.

Disability of employee from tuberculosis resulting from jumping into river to escape injury from breaking of timber of crane.—Where an employee engaged in operating a crane jumped into the river, a distance of about ten feet, in order to save himself from being hurt by the breaking of one of the timbers of the crane, and waded to the shore, contracting a heavy cold and pleurisy, which developed into pulmonary tuberculosis, by reason of which he was disabled, a finding of the Commission that the employee's condition is the result of the accidental breaking of the timber, and that his going into the river resulted therefrom, is not unreasonable, and an award should be affirmed. *Rist v. Larkin & Sangster* (1916), 171 App. Div. 71, 156 N. Y. Supp. 875.

Tuberculosis resulting in death held not to have resulted from a fracture of the deceased's leg, although he was afflicted with incipient tuberculosis before the accident. *Cappelli v. Cranford* (1915) 6 State Dep. Rep. 349.

§ 10. Liability for compensation.

The right to the compensation provided for in the Workmen's Compensation Act does not depend upon the negligence of the employer. *Shinnick v. Clover Farms Co.* (1915), 169 App. Div. 236, 154 N. Y. Supp. 423.

"Accidental personal injury" defined. *Moore v. Lehigh Valley R. R. Co.* (1915), 169 App. Div. 177, 154 N. Y. Supp. 620.

Section 10 means that the accidental injury must arise both out of and in the course of the employment. Hence, *it seems*, an accidental injury sustained during the course of the employment, but not arising out of the employment, would not be within the purview of the statute. *Moore v. Lehigh Valley R. R. Co.* (1915), 169 App. Div. 177, 154 N. Y. Supp. 620.

Concurrent awards for different injuries not allowed; subsequent award for continuing disability.—While two concurrent awards cannot be made, consecutive awards may be made, where the facts warrant them. Thus, *it seems*, that if on the expiration of the period of the award made, the disability of the claimant shall still exist by reason of injuries resulting from the accident other than the loss of the foot, he may be entitled to a subsequent award, if it be shown that the other disabilities are permanent or continue to exist at the expiration of the period of the first award. *Fredenburg v. Empire United Railways* (1915), 168 App. Div. 618, 154 N. Y. Supp. 351.

Injury to laborer employed as syrup boiler while assisting in fixing elevator; injuries arising out of and in course of employment.—Where a general laborer, employed by a canning and preserving company as a syrup boiler, leaves his immediate employment to give incidental aid to a fellow-employee in the operation of a freight elevator, which has not been broken or damaged, but has merely ceased to respond to the cables, and which is operated in common by all of the employees, his injuries, sustained by the falling of the car to the basement, must be held to have arisen "out of and in the course of his employment" within the meaning of the Workmen's Compensation Law. *Martucci v. Hills Bros. Co.* (1916), 171 App. Div. 370, 156 N. Y. Supp. 833.

§ 11. Alternative remedy.—The liability of an employer prescribed by the last preceding section shall be exclusive and in place of any other liability whatsoever, to such employee, his personal representatives, husband, parents, dependents or next of kin, or anyone otherwise entitled to re-

cover damages, at common law or otherwise on account of such injury or death, except that if an employer fail to secure the payment of compensation for his injured employees and their dependents as provided in section fifty of this chapter, an injured employee, or his legal representative in case death results from the injury, may, at his option, elect to claim compensation under this chapter, or to maintain an action in the courts for damages on account of such injury; and in such an action it shall not be necessary to plead or prove freedom from contributory negligence nor may the defendant plead as a defense that the injury was caused by the negligence of a fellow servant nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1914, ch. 316, and L. 1916, ch. 622, in effect June 1, 1916.*)

Failure of employer to take out insurance; election of dependent to claim under statute; appointment as administratrix not necessary.—Although an employer has failed to take out insurance for his employees as required by the Workmen's Compensation Law, the widow of an employee who was killed in his employment, may, pursuant to this section elect to claim compensation under the statute rather than to maintain an action for damages, and she need not first qualify as executrix or administratrix of the decedent in the Surrogate's Court. *Dearborn v. Pengeot Auto Import Co.* (1915), 170 App. Div. 93, 155 N. Y. Supp. 769.

§ 14. Weekly wages basis of compensation.

Basis of award for death of minor; probable increase in wages may be considered.—Section 14 of the Workmen's Compensation Law provides in effect that the average weekly wages of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation or *death benefits*, and if the injured employee was a minor when injured, and under normal conditions his wages would be expected to increase, that fact may be considered in arriving at his average weekly wages. This is true, notwithstanding the provision of section 16 that "all questions of dependency shall be determined as of the time of the accident." Hence, the Commission in making an award for the death of a boy sixteen years old, who was earning five dollars and fifty cents a week, may base its award on the fact that, as the boy progressed in his trade, his wages at the end of two years would under normal conditions have increased to twelve dollars per week, and upon arriving at his majority he would have earned from twelve dollars to eighteen dollars per week. *Kilberg v. Vitich* (1916), 171 App. Div. 89, 156 N. Y. Supp. 971.

Compensation is fixed upon the basis of loss of wages or salary, and where it appears that an employee, although injured, has lost no salary or wages, there is no basis upon which compensation can be fixed. *Kennedy v. Kennedy Mfg. and Engineering Co.* (1916) State Dep. Rep., Adv. Sheet No. 37, p. 107.

Claim by superintendent and manager of summer hotel for injuries sustained while going down a ladder, denied, where his salary was paid during the entire period of disability. *Goddard v. Hurtt* (1916) State Dep. Rep., Adv. Sheet No. 39, p. 65.

Method of computing the wages of a deceased person approved. *Rhymer v. Hueber Building Co.* (1916), 171 App. Div. 56, 156 N. Y. Supp. 903.

§ 15. **Schedule in case of disability.**—The following schedule of compensation is hereby established:

1. **Total permanent disability.** In case of total disability adjudged to

be permanent sixty-six and two-thirds per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

2. Temporary total disability. In case of temporary total disability, sixty-six and two-thirds per centum of the average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of three thousand five hundred dollars, except as otherwise provided in this chapter.

3. Permanent partial disability. In case of disability partial in character but permanent in quality the compensation shall be sixty-six and two-thirds per centum of the average weekly wages and shall be paid to the employee for the period named in the schedule as follows:

Thumb. For the loss of a thumb, sixty weeks.

First finger. For the loss of a first finger, commonly called index finger, forty-six weeks.

Second finger. For the loss of a second finger, thirty weeks.

Third finger. For the loss of a third finger, twenty-five weeks.

Fourth finger. For the loss of a fourth finger, commonly called the little finger, fifteen weeks.

Phalange of thumb or finger. The loss of the first phalange of the thumb or finger shall be considered to be equal to the loss of one-half of such thumb or finger, and compensation shall be one-half of the amount above specified. The loss of more than one phalange shall be considered as the loss of the entire thumb or finger; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

Great toe. For the loss of a great toe, thirty-eight weeks.

Other toes. For the loss of one of the toes other than the great toe, sixteen weeks.

Phalange of toe. The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of said toe, and the compensation shall be one-half of the amount specified. The loss of more than one phalange shall be considered as the loss of the entire toe.

Hand. The loss of a hand, two hundred and forty-four weeks.

Arm. For the loss of an arm, three hundred and twelve weeks.

Foot. For the loss of a foot, two hundred and five weeks.

Leg. For the loss of a leg, two hundred and eighty-eight weeks.

Eye. For the loss of an eye, one hundred and twenty-eight weeks.

Loss of use. Permanent loss of the use of a hand, arm, foot, leg, eye, thumb, finger, toe, or phalange, shall be considered as the equivalent of the loss of such hand, arm, foot, leg, eye, thumb, finger, toe or phalange.

Amputations. Amputation between the elbow and the wrist shall be

considered as the equivalent of the loss of a hand. Amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm. Amputation at or above the knee shall be considered as the loss of the leg.

The compensation for the foregoing specific injuries shall be in lieu of all other compensation, except the benefits provided in section thirteen of this chapter.

In case of an injury resulting in serious facial or head disfigurement the commission may in its discretion, make such award or compensation as it may deem proper and equitable, in view of the nature of the disfigurement, but not to exceed three thousand five hundred dollars.

Other cases. In all other cases in this class of disability, the compensation shall be sixty-six and two-thirds per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the commission on its own motion or upon application of any party in interest.

4. Temporary partial disability. In case of temporary partial disability, except the particular cases mentioned in subdivision three of this section, an injured employee shall receive sixty-six and two-thirds per centum of the difference between his average weekly wages and his wage earning capacity thereafter in the same employment or otherwise during the continuance of such partial disability, but not to exceed when combined with his decreased earnings the amount of wages he was receiving prior to the injury, and not to exceed in total the sum of three thousand five hundred dollars, except as otherwise provided in this chapter.

5. Limitation. The compensation payment under subdivisions one, two and four and under subdivision three except in case of the loss of a hand, arm, foot, leg, or eye, shall not exceed fifteen dollars per week nor be less than five dollars per week; the compensation payment under subdivision three in case of the loss of a hand, arm, foot, leg or eye, shall not exceed twenty dollars per week nor be less than five dollars a week; provided, however, that if the employee's wages at the time of injury are less than five dollars per week he shall receive his full weekly wages.

6. Previous disability. The fact that an employee has suffered previous disability or received compensation therefor shall not preclude him from compensation for a later injury nor preclude compensation for death resulting therefrom; but in determining compensation for the later injury or death his average weekly wages shall be such sum as will reasonably represent his earning capacity at the time of the later injury, provided, however, that an employee who is suffering from a previous disability shall not receive compensation for a later injury in excess of the compensation

allowed for such injury when considered by itself and not in conjunction with the previous disability.

7. Permanent total disability after permanent partial disability. If an employee who has previously incurred permanent partial disability through the loss of one hand, one arm, one foot, one leg, or one eye, incurs permanent total disability through the loss of another member or organ, he shall be paid, in addition to the compensation for permanent partial disability provided in this section and after the cessation of the payments for the prescribed period of weeks special additional compensation for the remainder of his life to the amount of sixty-six and two-thirds per centum of the average weekly wage earned by him at the time the total permanent disability was incurred. Such additional compensation shall be paid out of a special fund created for such purpose in the following manner: The insurance carrier shall pay to the state treasurer for every case of injury causing death in which there are no persons entitled to compensation the sum of one hundred dollars. The state treasurer shall be the custodian of this special fund, and the commission shall direct the distribution thereof. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1915, ch. 615, and L. 1916, ch. 622, in effect June 1, 1916.*)

A claimant injured by having his right hand severed at the wrist, who has previously lost his left hand, is entitled to compensation for "permanent total disability" under subdivision 1 of this section. *Schwab v. Emporium Forestry Co.* (1915), 167 App. Div. 614, 153 N. Y. Supp. 234.

An injury necessitating the amputation of the fleshy part of the external ear is not included in the schedule of injuries for which compensation may be had under the Workmen's Compensation Act. Hence, where such injury was caused by the bite of a horse alleged to have been vicious to the knowledge of the owner, the plaintiff's employer, the right to recover therefor in a common-law action still remains. *Shinnick v. Clover Farms Co.* (1915), 169 App. Div. 236, 154 N. Y. Supp. 423.

Injury to motorman by electric current; disability by loss of foot and burns; computation of award.—Appeal from awards made by the Workmen's Compensation Commission to a motorman of a trolley express car who was injured by the electric current so as to necessitate the amputation of one foot, and was also burned upon other parts of his body. For a month and a few days preceding the accident, the claimant had worked for his employer as motorman of an express car at the rate of thirty-five cents an hour, and before that time had worked as motorman on passenger cars at the rate of thirty cents per hour. There was evidence that it was the custom of the employer to pay employees who had been in service as long as the claimant at the rate of thirty-five cents per hour when working on freight runs. On all the evidence, *held*, that the Commissioners in computing the award made to the claimant for the total disability caused by the loss of his foot were justified in taking his earnings at the rate of thirty-five cents per hour rather than at the rate of thirty cents per hour, which he had previously earned. The Commissioners, however, having made the full statutory award for total disability, had no power to make another initial award for the temporary disabilities caused by the other injuries received by the claimant. *Fredenburg v. Empire United Railways* (1915), 168 App. Div. 618, 154 N. Y. Supp. 351.

Award for loss of hand where three fingers have been lost and the fourth ren-

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dered useless.—Where it is established that a claimant has lost his first three fingers, and that the fourth finger is stiff and practically useless, the Workmen's Compensation Commission may make an award for the loss of the hand, although it had previously made an allowance merely for the loss of the first three fingers and the mutilation of the fourth finger. *It seems*, that where the loss or injury to fingers and thumb result in the permanent loss of the use of the hand in the practical everyday work of the individual, the Commission is authorized to recognize this fact and to treat the hand as lost in fixing the compensation. The question presented to the Commission is not whether the hand is permanently useless for a particular work, but whether it is useless for any kind of work to which the claimant may be adapted. *Rockwell v. Lewis* (1915), 168 App. Div. 674, 154 N. Y. Supp. 893.

Loss of portion of finger with permanent injury to remainder; extent of award.—Where an injury to the finger of an employee necessitates the amputation thereof at the first phalange and the whole of the finger has become practically useless, the employee is, at the most, only entitled to the statutory allowance authorized for the total loss of such finger. She is not entitled to a continuing allowance under the subdivision of section 15 which provides that "in all other cases" the compensation shall be sixty-six and two-thirds per centum of the difference between the average weekly wage and the subsequent wage-earning capacity in the same employment during the continuance of a partial disability. This, because, if under the circumstances a continuing allowance could be made under said section, the employee might receive greater compensation for the loss of a portion of a finger than for the loss of the entire finger. *Feinman v. Albert Mfg. Co.* (1915), 170 App. Div. 147, 155 N. Y. Supp. 909.

The provisions of the statute providing compensation for the loss of a certain portion of the finger become operative and applicable when it appears that substantially all of the portion of the finger so designated has been lost, and the statute should not be interpreted narrowly for the purpose of defeating a recovery. *Matter of Petrie* (1915), 215 N. Y. 335, affg. 165 App. Div. 561, 151 N. Y. Supp. 307.

§ 16. **Death benefits.**—If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

1. Reasonable funeral expenses not exceeding one hundred dollars;
2. If there be a surviving wife (or dependent husband) and no child of the deceased under the age of eighteen years, to such wife (or dependent husband) thirty per centum of the average wages of the deceased during widowhood (or dependent widowerhood) with two years' compensation in one sum, upon remarriage; and if there be surviving child or children of the deceased under the age of eighteen years, the additional amount of ten per centum of such wages for each such child until of the age of eighteen years; in case of the subsequent death of such surviving wife (or dependent husband) any surviving child of the deceased employee, at the time under eighteen years of age, shall have his compensation increased to fifteen per centum of such wages, and the same shall be payable until he shall reach the age of eighteen years; provided that the total amount payable shall in no case exceed sixty-six and two-thirds per centum of such wages. The commission may in its discretion require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the

absence of such a requirement by the commission the appointment of a guardian for such purposes shall not be necessary.

3. If there be surviving child or children of the deceased under the age of eighteen years, but no surviving wife (or dependent husband) then for the support of each such child until of the age of eighteen years, fifteen per centum of the wages of the deceased, provided that the aggregate shall in no case exceed sixty-six and two-thirds per centum of such wages.

4. If there be no surviving wife (or dependent husband) or child under the age of eighteen years or if the amount payable to surviving wife (or dependent husband) and to children under the age of eighteen years shall be less in the aggregate than sixty-six and two-thirds per centum of the average wages of the deceased, then for the support of grandchildren or brothers and sisters under the age of eighteen years, if dependent upon the deceased at the time of the accident, fifteen per centum of such wages for the support of each such person until of the age of eighteen years; and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the accident, twenty-five per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between sixty-six and two-thirds per centum of such wages, and the amount payable as hereinbefore provided to surviving wife (or dependent husband) or for the support of surviving child or children.

Any excess of wages over one hundred dollars a month shall not be taken into account in computing compensation under this section. All questions of dependency shall be determined as of the time of the accident. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1914, ch. 316, and L. 1916, ch. 622, in effect June 1, 1916.*)

Application.—The act provides but a single rate of compensation, to wit, sixty-six and two-thirds per centum of the employee's average weekly wages, and this percentage for a longer or shorter period is applicable to all disabilities whether total or partial, and is the maximum compensation provided for by the statute, which was not intended to be a source of profit to the employee, or a means to punish the employer. *Fredenburg v. Empire United Railways* (1915), 168 App. Div. 618, 154 N. Y. Supp. 351.

Dependents entitled to award.—The statute does not limit the right to an award to those dependents who had the legal right to compel the deceased to furnish them support, but it applies as well to cases where the person was dependent for support upon the voluntary contributions of the deceased. The statute does not require that a person shall be wholly dependent in order to be entitled to the death benefit, and the fact that the sister was in part dependent for her support upon other sources will not deprive her of the benefit of the statute. *Walz v. Holbrook, Cabot & Rollins Corporation* (1915), 170 App. Div. 6, 155 N. Y. Supp. 703.

A claimant need not be reduced to absolute want or be declared a pauper in order to come within the provisions of the statute. Partial dependency is sufficient. Hence, a mother having some small means and some other sources of revenue at the time of the death of her son, may properly be held to be dependent within the meaning of the statute. *Rhymer v. Hueber Building Co.* (1916), 171 App. Div. 56, 156 N. Y. Supp. 903.

Father held to have been dependent upon the earning of a deceased son. *Brio v. Carpenter, Boxley & Herrick* (1915) 6 State Dep. Rep. 364.

Mother of a decedent held not to be dependent upon the earnings of her son within the meaning of the statute. *Williams v. Coney Island Construction Co.* (1915) 6 State Dep. Rep. 346.

Claimants held not dependent upon deceased at time of his death. *Kolb v. Borden's Condensed Milk Co.* (1915) 4 State Dep. Rep. 347.

Right of parents to compensation for death of minor son; parents "dependent" upon wages of minor.—The parents of a minor, eighteen years of age and unmarried, from whom they received ten dollars a week for board, are entitled, in a proper case, upon his death, to compensation under subdivision 4 of this section. Parents may be "dependent" upon the wages of a minor within the meaning of the statute. *Frischia v. Drake Brothers Co.* (1915), 167 App. Div. 496, 153 N. Y. Supp. 392.

Right of widow to compensation awarded to minors.—Under this section the surviving wife and principal dependent is entitled not only to thirty per cent of the average wages of the deceased during her widowhood but also to the additional amount of ten per cent of such wages for each minor child until the age of eighteen years. *It seems*, that it was not the intention of the Legislature to require the appointment of a general guardian in order to enable children to collect the amounts awarded to them under the statute. *Woodcock v. Walker* (1915), 170 App. Div. 4, 155 N. Y. Supp. 702.

Minor sister of deceased partly dependent upon his voluntary contributions, entitled to compensation.—A person at the time of his accidental death while engaged in a hazardous occupation was twenty-three years of age and unmarried, and had always lived in his father's family, and had voluntarily paid to his mother each week to assist in maintaining the family from eight dollars to ten dollars out of his weekly wage of twelve dollars and ninety-eight cents. The other members of the family were his father, sixty years of age, and able to do but little work; a sister, a delicate school girl, fifteen years of age; a brother, nineteen years of age, earning eight dollars or nine dollars a week, out of which he paid four dollars or five dollars to his mother, and the mother, who owned the house and managed the affairs of the family. It was *held*, that the sister, who earned nothing and had no independent means of support, as well as the father and mother was a dependent of the deceased within the meaning of the Workmen's Compensation Law. *Walz v. Holbrook, Cabot & Rollins Corporation* (1915), 170 App. Div. 6, 155 N. Y. Supp. 703.

§ 17. **Aliens.**—Compensation under this chapter to aliens not residents (or about to become nonresidents) of the United States or Canada, shall be the same in amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or, if there be no surviving wife or child or children, to surviving father or mother, or grandfather or grandmother, whom the employee has supported, either wholly or in part, for the period of one year prior to the date of the accident, and except that the commission may, at its option, or upon the application of the insurance carrier, shall, commute all future installments of compensation to be paid to such aliens, by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the commission. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1916, ch. 622, in effect June 1, 1916.*)

§ 18. Notice of injury.

Failure of an employee to give written notice of his injury to his employer within ten days of the accident, excused, on the ground that the employer was not prejudiced thereby. *Sauter v. N. Y. C. C. R. Co.* (1915) 6 State Dep. Rep. 316; *Marinaccio v. Flinn-O'Rourke Co.* (1915) 6 State Dep. Rep. 318.

Failure to give notice of injury until eight and one-half months held to have been prejudicial to the employer. *Opitz v. Tietje* (1915) 6 State Dep. Rep. 347.

§ 20. Determination of claims for compensation.

The jurisdiction of the Commission is limited to compensation for an injury to an employee against an employer, and it has no right to pass on other questions. The Commission has no jurisdiction to pass upon the contract relations alleged to exist between an employer and employee. *Landrigan v. Cochran* (1915) 6 State Dep. Rep. 310.

The Commission has jurisdiction under section 20 to determine whether or not a policy of insurance has been cancelled. *Bloom v. Tiffin* (1915) 5 State Dep. Rep. 441.

The Commission is the sole and "final" judge of the facts, and the Appellate Division is not only forbidden to trespass upon the jurisdiction of the Commission in this field, but by section 20 of the statute it is circumscribed even in its review of questions of law. Hence, a finding by the Commission that a mother was a "dependent" of her son is "final" where there is evidence to support it. *Rhymer v. Hueber Building Co.* (1916), 171 App. Div. 56, 156 N. Y. Supp. 903.

The decision of the commission is final as to all questions of fact, and the jurisdiction of this court is limited to the review of questions of law. The question who was the employer of deceased for whose death compensation is sought, and, therefore, liable therefor, examined and *held*, to have been properly and finally determined by the commission. *Dale v. Saunders Brothers* (1916), 218 N. Y. 59, affg. 171 App. Div. 528, 157 N. Y. Supp. 1062.

Review of findings of fact made by Commission.—A determination of the Workmen's Compensation Commission as to the earnings of a claimant is a conclusion of fact which cannot be reviewed on appeal if there be any evidence to support it. *Fairchild v. Pennsylvania R. R. Co.* (1915), 170 App. Div. 135, 155 N. Y. Supp. 751.

The Appellate Division will not interfere with a determination by the Commission that injuries to a claimant were accidental and arose out of and in the course of his employment, although the evidence upon the subject is meagre. *Powley v. Vivian & Co.* (1915), 169 App. Div. 170, 154 N. Y. Supp. 426.

Where the claimant appeared personally before the Commissioners at a second hearing and testified that his eyesight has been impaired by the accident on which his claim is founded, the only evidence to the contrary being the expert testimony of two physicians given on the first hearing, and the Commissioners make an award founded upon the personal observation of the witness and upon his testimony, there is a decision of a question of fact which will not be reviewed by the Appellate Division. *Goldstein v. Centre Iron Works* (1915), 167 App. Div. 526, 153 N. Y. Supp. 224.

A determination of the Workmen's Compensation Commission as to the persons dependent on the deceased for support is final and not subject to review on appeal, if there is any evidence to support it. *Hendricks v. Seeman Bros.* (1915), 170 App. Div. 133, 155 N. Y. Supp. 638.

Where the Commission found that poisoning by ivy was the original cause leading to the death, and there is some evidence to that effect, the finding of fact will not be reviewed by the Appellate Division. *Plass v. Central New England Railway Co.* (1915), 169 App. Div. 826, 155 N. Y. Supp. 854.

The Appellate Division has power to examine the evidence adduced before the Commission as supplementing, illumining and explaining, though not as varying or contradicting, the findings of fact made by the Commission. *Gleisner v. Gross & Herbener* (1915), 170 App. Div. 37, 155 N. Y. Supp. 946.

When the undisputed facts, in connection with the testimony of a claimant supported by every favorable inference that can be drawn therefrom do not warrant an award, the court of appeals will, upon an appeal from a non-unanimous affirmance by the Appellate Division, reverse upon the question of law thus presented. *Heitz v. Ruppert* (1916), 218 N. Y. 148.

§ 21. Presumptions.

Application.—This section means that when an accident has been established, the presumption in the absence of substantial evidence to the contrary arises that a claim growing out of the accident falls within the statute. The Commission must be satisfied by evidence either direct or circumstantial that the *accident happened* before the presumption established by the statute can arise. *Hyland v. Winaut* (1915) 6 State Dep. Rep. 304. Employee found dead in elevator. Evidence insufficient to overcome the presumption of section 21. *Ignatowsky v. Berman* (1915) 6 State Dep. Rep. 326.

Where an employee is engaged in an employment not generally denominated as hazardous, who incidentally performs at times, services that are hazardous within the meaning of the statute, there must be proof connecting the accident with the particular hazard before compensation can be awarded. *Fitzsimmons v. Wadsworth* (1915) 6 State Dep. Rep. 351.

Application on appeal.—The provision that in any proceeding for the enforcement of a claim for compensation under the statute "it shall be presumed . . . in the absence of substantial evidence to the contrary . . . that the claim comes within the provisions of" the statute, is as operative and binding on appeal as in the proceeding before the Commission. *Rheinwald v. Builders' Brick & Supply Co.* (1915), 168 App. Div. 425, 153 N. Y. Supp. 598.

The presumption raised by this section, that a case comes within the meaning of the law, does not permit the words of the statute to be warped from their usual and ordinary meaning. It relates more to the facts, and so far as it affects the construction of the statute itself, it can only be material as indicating that the statute is a remedial one and should be given a liberal construction. *Tomassi v. Christensen* (1916), 171 App. Div. 284, 156 N. Y. Supp. 905.

An employer cannot benefit by withholding facts known to it, owing to the presumption created by the statute. *McQueeney v. Sutphen & Myer* (1915), 167 App. Div. 528, 153 N. Y. Supp. 554.

§ 23. Appeals from the commission.—An award or decision of the commission shall be final and conclusive upon all questions within its jurisdiction, as against the state fund or between the parties, unless within thirty days after a copy of such award or decision has been sent to the parties, an appeal be taken to the appellate division of the supreme court of the third department. The commission may also, in its discretion, on the application of either party, certify to such appellate division of the supreme court, questions of law involved in its decision. Such appeals and the questions so certified shall be heard in a summary manner and shall have precedence over all other civil cases in such court. The commission shall be deemed a party to every such appeal, and the attorney-general, without extra compensation, shall represent the commission thereon. An appeal may also

be taken to the court of appeals in all cases where the decision of the appellate division is not unanimous and by the consent of the appellate division or a judge of the court of appeals where the decision of the appellate division is unanimous in the same manner and subject to the same limitations not inconsistent herewith as is now provided in civil actions. It shall not be necessary to file exceptions to the rulings of the commission. The commission shall not be required to file a bond upon an appeal by it to the court of appeals. Otherwise such appeals shall be subject to the law and practice applicable to appeals in civil actions. Upon the final determination of such an appeal, the commission shall make an award or decision in accordance therewith. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1916, ch. 622, in effect June 1, 1916.*)

Right to appeal.—Under the provisions of this section an appeal cannot be taken to the Court of Appeals from a unanimous decision unless the Appellate Division permits it and certifies that in its opinion a question of law is involved which ought to be reviewed or unless, in case of its refusal to so certify, an appeal is allowed by a judge of this court. The Workmen's Compensation Act provides a summary remedy which differs in substantial respects from a civil action to recover damages for personal injuries caused by negligence. It was not the legislative design to extend the right of appeal or to permit appeals to the Court of Appeals in cases arising under it where no right of appeal would exist if the employee had sought to enforce his rights in an action for damages for personal injuries resulting from negligence. *Harnett v. Steen Co.* (1915), 216 N. Y. 101.

Employer's right of appeal; insurance in State fund.—The Workmen's Compensation Law makes a distinction as respects the right of appeal between those who insure in the State fund and those who insure with other insurance carriers. Employers who insure in the State fund are given absolute immunity under section 53, which is not the case where they take out other insurance. Hence, where an employer has insured in the State fund, his interest in the award is so remote that the Legislature has not authorized an appeal by him where he is not otherwise aggrieved. *Crockett v. International Railway Co.* (1915), 170 App. Div. 122, 155 N. Y. Supp. 692.

Where the Commission has certified the evidence taken before it, as well as its own findings of fact therefrom to aid the court on appeal, the evidence may be considered to explain but not to contradict or vary the Commission's findings. *Rheinwald v. Builders' Brick & Supply Co.* (1915), 168 App. Div. 425, 153 N. Y. Supp. 598.

§ 26. Enforcement of payment in default.—If payment of compensation, or an instalment thereof, due under the terms of an award, be not made by the employer within ten days after the same is due, the insurance carrier shall be liable therefor and if not paid within ten days after demand by the injured employee or in case of death his dependents or by the commission, the amount of such payment shall constitute a liquidated claim for damages against the employer, self-insurer or insurance corporation, which with an added penalty of fifty per centum may be recovered in an action to be instituted by the commission in the name of the people of the state. An employer who negligently or intentionally defaults in payment of compensation in the first instance under this chapter shall be liable to a penalty of not more than ten per centum of the amount of such

compensation, notwithstanding the fact that the insurance corporation or state fund subsequently pays the compensation as provided in this section. If such default be made in the payment of an instalment of compensation and the whole amount of such compensation be not due, the commission may, if the present value of such compensation be computable, declare the whole amount thereof due, and recover the amount thereof with the added penalties, as provided by this section. Any such action may be compromised by the commission or may be prosecuted to final judgment as, in the discretion of the commission, may best serve the interests of the persons entitled to receive the compensation or the benefits. Compensation recovered under this section shall be disbursed by the commission to the persons entitled thereto in accordance with the award. A penalty recovered pursuant to this section shall be paid into the state treasury, and be applicable to the expenses of the commission.

In case of default by the employer in the payment of any compensation due under an award for the period of thirty days after payment is due and payable, any party in interest may file with the county clerk for the county in which the injury occurred, a certified copy of a decision of the state industrial commission awarding compensation, or ending, diminishing or increasing compensation previously awarded, from which no appeal has been taken within the time allowed therefor, and thereupon judgment must be entered in the supreme court by the clerk of such county in conformity therewith immediately upon the filing of such decision. Such decree or judgment shall be entered in the same manner and shall have the same effect and all proceedings in relation thereto shall thereafter be the same, as though said decree or judgment had been rendered in a suit duly heard and determined by the supreme court, except that there shall be no appeal therefrom. The court upon the filing with it of a certified copy of a decision of the state industrial commission ending, diminishing or increasing compensation previously awarded, shall revoke or modify its prior decree or judgment so that it will conform to said decision. Neither the commission nor any party in interest shall be required to pay any fee to any public officer for filing or recording any paper or instrument executed in pursuance of this section. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1915, ch. 167, and L. 1916, ch. 622, in effect June 1, 1916.*)

§ 27. **Depositing future payments.**—If an award under this chapter requires payment of compensation by an employer or an insurance corporation in periodical payments, and the nature of the injury makes it possible to compute the present value of all future payments with due regard for life contingencies, the commission may, in its discretion, at any time, compute and permit or require to be paid into the state fund an amount equal to the present value of all unpaid compensation for which liability exists, together with such additional sum as the commission may deem necessary for a proportionate payment of expenses of administering the fund so cre-

ated, such moneys to constitute an aggregate trust fund; and thereupon such employer or insurance corporation shall be discharged from any further liability under such award and payment of the same shall be assumed by the trust fund so created.

The moneys so paid into this fund shall constitute an aggregate trust fund and shall be kept separate and apart from all other moneys of the state fund, and shall not be liable for any expenses of administration of the state fund other than the expenses involved in the administration of such trust fund. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1916, ch. 622, in effect June 1, 1916.*)

§ 29. Subrogation to remedies of employees.—If an employee entitled to compensation under this chapter be injured or killed by the negligence or wrong of another not in the same employ, such injured employee, or in case of death, his dependents, shall, before any suit or claim under this chapter, elect whether to take compensation under this chapter or to pursue his remedy against such other. Such election shall be evidenced in such manner as the commission may by rule or regulation prescribe. If he elect to take compensation under this chapter, the cause of action against such other shall be assigned to the state for the benefit of the state insurance fund, if compensation be payable therefrom, and otherwise to the person, association, corporation, or insurance carrier liable for the payment of such compensation, and if he elect to proceed against such other, the state insurance fund, person, association, corporation, or insurance carrier, as the case may be, shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected, and the compensation provided or estimated by this chapter for such case. Such a cause of action assigned to the state may be prosecuted or compromised by the commission. A compromise of any such cause of action by the employee or his dependents at an amount less than the compensation provided for by this chapter shall be made only with the written approval of the commission, if the deficiency of compensation would be payable from the state insurance fund, and otherwise with the written approval of the person, association, corporation, or insurance carrier liable to pay the same. Wherever an employee is killed by the negligence or wrong of another not in the same employ and the dependents of such employee entitled to compensation under this chapter are minors, such election to take compensation and the assignment of the cause of action against such other and such notice of election to pursue a remedy against such other shall be made by such minor, or shall be made on behalf of such minor by a parent of such minor, or by his or her duly appointed guardian, as the commission may determine by rule in each case. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1916, ch. 622, in effect June 1, 1916.*)

One of the primary purposes of this section is to protect the employee against his own improvidence, weakness, ignorance or short-sightedness in compromising his claim for injuries, and a reciprocal advantage or protection to the insurer is given

in the form of a claim against any third party negligently causing the injury, which cannot be destroyed by the act of the injured party without the written approval of the insurer. *Woodward v. Conklin & Son* (1916), 171 App. Div. 736, 157 N. Y. Supp. 948.

The term "elect," as used in this section, does not have the ordinary meaning of indicating a choice between two inconsistent remedies against the same party, the exercise of which choice in one direction precludes action in another. *Woodward v. Conklin & Son* (1916), 171 App. Div. 736, 157 N. Y. Supp. 948.

A compromise or release by an employee of his cause of action against a third party is ineffectual against the insurer without the written approval of the latter. The release in such case does not prevent the insurer from prosecuting the assigned claim against the third party. *Woodward v. Conklin & Son* (1916), 171 App. Div. 736, 157 N. Y. Supp. 948.

The Workmen's Compensation Law is cumulative and alternative and does not impair the remedy of a servant as an individual under the common law or other statutes. It affects such remedy only when he elects to receive compensation under the act. *Miller v. New York Railways Co.* (1916), 171 App. Div. 316, 157 N. Y. Supp. 200.

In an action for personal injuries the defendant, who was not the plaintiff's master, may plead as a separate defense that the plaintiff, prior to the commencement of the action, made claim under the Workmen's Compensation Law for compensation for his disability due to the same accident, and received an award. The employee's decision to accept the compensation under the act constituted an election of remedies within the meaning of section 29 of the Workmen's Compensation Law and estopped him from any other remedy. *Miller v. New York Railways Co.* (1916), 171 App. Div. 316, 157 N. Y. Supp. 200.

A claim to recover damages for personal injuries not being assignable under the law of this state, the rules of statutory construction require, so far as possible, that section 29, so far as it modifies the existing law, shall be limited to the particular purpose for which it was enacted, and it must be construed in accordance with the legislative intent. *United States Fidelity & Guaranty Co. v. New York Railways Co.* (1916), 93 Misc. 118, 156 N. Y. Supp. 615.

Construing this section in the light of the general purpose of the statute, to establish a system of state insurance of employees engaged in hazardous employments and to provide in connection therewith a system of indemnification of the state, it is evident that the provision for "subrogation to remedies of employee" and the assignment of the workmen's cause of action to the state is for the purpose of indemnification only, and the extension of the same provision to individual or corporate insurers is subject to the same limitation, namely, the full indemnification of the insurer, and no more. *United States Fidelity & Guaranty Co. v. New York Railways Co.* (1916), 93 Misc. 118, 156 N. Y. Supp. 615.

Where a workman entitled to compensation under the statute was injured or killed by the negligence or wrong of another not in the same employ, and elects to take such compensation and assigns his claim against the third party tortfeasor to an insurer liable for the payment of the compensation, his assignee is entitled to be indemnified merely for the compensation paid under the law and may not recover the same damages which the employee might have been entitled to had he sued the third party tortfeasor. *United States Fidelity & Guaranty Co. v. New York Railways Co.* (1916), 93 Misc. 118, 156 N. Y. Supp. 615.

The reason for the provision as to election is founded upon the common-law rule that there should not be a double satisfaction for the same injury. The right thus to prescribe an election of remedies is not affected by the circumstance that the compensation is under the statute to be determined by data which are not prescribed for the jury in an action. Nor can it be claimed that the act merely

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provides insurance for the servant for he pays no premiums. *Miller v. New York Railways Co.* (1916), 171 App. Div. 316, 157 N. Y. Supp. 200.

Compliance with statute not a defense to action under section 1902 of the Code of Civil Procedure.—See *Shanahan v. Monarch Engineering Co.* (1915), 92 Misc. 466, 156 N. Y. Supp. 143.

Execution of release and receipt of payment of damages by employee held not to effect a claim for compensation. *Buell v. N. Y. C. & H. R. R. Co.* (1915) 6 State Dep. Rep. 377.

Election of minor.—The legislature may remove the disability of infancy so as to permit a minor, old enough under the Labor Law to go to work, to make an election as to whether he will work under the "Workmen's Compensation Act" or the common law. *Herkey v. Cigar Manufacturing Co.* (1915), 90 Misc. 457, 153 N. Y. Supp. 369.

Where in a common law action brought in behalf of an infant employee to recover damages for personal injuries received while working for defendant in his factory the answer pleads as a separate and complete defense that defendant has complied with the provisions of the Workmen's Compensation Act and is relieved from all liability to plaintiff, except as provided in said statute, a demurrer to such defense that said statute cannot deprive plaintiff of her right to resort to the court for damages if she so desire must be overruled, as under said statute the employee is given no choice or election, and if the employer chooses to come thereunder the employee is bound to and is barred from all other remedy. *Herkey v. Cigar Manufacturing Co.* (1915), 90 Misc. 457, 153 N. Y. Supp. 369.

An employee may maintain a common-law action for negligence against a third party without alleging and proving his election to do so pursuant to this section. *It seems*, that where an employee brings such an action without having duly evidenced his election to do so he will not be entitled to any compensation under the statute, even though he fails to recover the full amount to which he would have been entitled. *Lester v. Otis Elevator Co.* (1915), 169 App. Div. 613, 155 N. Y. Supp. 524, *affg.* 90 Misc. 649, 153 N. Y. Supp. 1058.

§ 34. Preferences.—The right of compensation granted by this chapter and any awards made thereunder shall have the same preference or lien without limit of amount against the assets of the employer as is now or hereafter may be allowed by law for a claim for unpaid wages for labor. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1916, ch. 622, in effect June 1, 1916.*)

§ 50. Security for payment of compensation.—An employer shall secure compensation to his employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation in the state fund, or
2. By insuring and keeping insured the payment of such compensation with any stock corporation or mutual association authorized to transact the business of workmen's compensation insurance in this state. If insurance be so effected in such a corporation or mutual association the employer shall forthwith file with the commission, in form prescribed by it, a notice specifying the name of such insurance corporation or mutual association and such information regarding the policies as the commission may require.
3. By furnishing satisfactory proof to the commission of his financial ability to pay such compensation for himself, in which case the commission

may, in its discretion, require the deposit with the commission of securities of the kind prescribed in section thirteen of the insurance law, in an amount to be determined by the commission, to secure his liability to pay the compensation provided in this chapter. The commission shall have the authority to revoke its consent furnished under this section at any time for good cause shown.

If an employer fail to comply with this section, he shall be liable to a penalty during which such failure continues of an amount equal to the pro rata premium which would have been payable for insurance in the state fund for such period of noncompliance to be recovered in an action brought by the commission.

The commission may, in its discretion, for good cause shown, remit any such penalty, provided the employer in default secure compensation as provided in this section. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1914, ch. 316, and L. 1916, ch. 622, in effect June 1, 1916.*)

Methods of providing for security of employees.—As the State, through its Commission, undertakes to make compensation for injuries received in hazardous employments from moneys which the employer has paid in advance for that purpose, or the payment of which he has secured by proper insurance, the State must be held strictly to its obligation to disburse the moneys received under the act. *McQueeney v. Sutphen & Myer* (1915), 167 App. Div. 528, 153 N. Y. Supp. 554.

The rights of an employee do not depend at all upon the manner in which his employer has elected to carry his insurance. An employee is not prejudiced by the fact that his employer qualifies as a self-insurer or insures otherwise than in the State fund. *Winfield v. New York Central & Hudson River R. R. Co.* (1915), 168 App. Div. 351, 153 N. Y. Supp. 499.

§ 52. **Effect of failure to secure compensation.**—Failure to secure the payment of compensation shall constitute a misdemeanor and have the effect of enabling the injured employee, or in case of death, his dependents or legal representatives, to maintain an action for damages in the courts, as prescribed by section eleven of this chapter. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1916, ch. 622, in effect June 1, 1916.*)

§ 54. **The insurance contract.**—1. Right of recourse to the insurance carrier. Every policy of insurance covering the liability of the employer for compensation issued by a stock company or by a mutual association authorized to transact workmen's compensation insurance in this state shall contain a provision setting forth the right of the commission to enforce in the name of the people of the state of New York for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance carrier shall to the extent thereof be a bar to the recovery against the other of the amount so paid.

2. Knowledge and jurisdiction of the employer extended to cover the

insurance carrier. Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this chapter, be jurisdiction of the insurance carrier and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation under the provisions of this chapter.

3. Insolvency of employer does not release the insurance carrier. Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of compensation for injuries or death sustained by an employee during the life of such policy.

4. Limitation of indemnity agreements. Every contract or agreement of an employer the purpose of which is to indemnify him from loss or damage on account of the injury of an employee by accidental means, or on account of the negligence of such employer or his officer, agent or servant, shall be absolutely void unless it shall also cover liability for the payment of the compensation provided for by this chapter.

5. Cancellation of insurance contracts. No contract of insurance issued by an insurance carrier against liability arising under this chapter shall be cancelled within the time limited in such contract for its expiration until at least ten days after a notice of cancellation of such contract, on a date specified in such notice, shall be filed in the office of the commission and also served on the employer. Such notice shall be served on the employer by delivering it to him or by sending it by mail, by registered letter, addressed to the employer at his or its last known place of residence; provided that, if the employer be a partnership, then such notice may be so given to any one of the partners, and if the employer be a corporation then the notice may be given to any agent or officer of the corporation upon whom legal process may be served. Provided, however, the right to cancellation of a policy of insurance in the state fund shall be exercised only for nonpayment of premiums.

6. Any insurance carrier may issue policies, including with employees, employers who perform labor incidental to their occupations, such policies insuring to such employers the same compensations provided for their employees, and at the same rates; provided, however, that the estimation of their wage values, respectively, shall be reasonable and separately stated in and added to the valuation of their pay rolls upon which their premium is computed. The employer so insured shall have the same rights and remedies given an employee by this chapter. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1916, ch. 622, in effect June 1, 1916.*)

Notice of cancellation of a policy of insurance, made on the first of the month, to be effective on the 10th, is insufficient. *McCaffrey v. Tager Contracting Co.* (1915)

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Rules; rule of evidence.

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5 State Dep. Rep. 434. A notice of cancellation by registered mail to the assured, at the address given in the policy, which address was given by the agent of the assured, is sufficient to effect a cancellation of the policy. *Bloom v. Tillin* (1915) 5 State Dep. Rep. 441.

An insurance company which has issued a policy of insurance can escape liability under it on the ground of cancellation, only by proof that they followed the statutory method literally, or if this is not done, that the statutory notice was in fact received by the insured. *Miner v. Turnbull* (1916) State Dep. Rep., Adv. Sheet No. 42, p. 102.

§ 67. **Rules.**—The commission shall adopt reasonable rules, not inconsistent with this chapter, regulating and providing for

1. The kind and character of notices, and the service thereof, in case of accident and injury to employees;
2. The nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the right to compensation;
3. The forms of application for those claiming to be entitled to compensation;
4. The method of making investigations, physical examinations and inspections;
5. The time within which adjudications and awards shall be made;
6. The conduct of hearings, investigations and inquiries;
7. The giving of undertakings by all subordinates who are empowered to receive and disburse moneys, to be approved by the attorney-general as to form and by the comptroller as to sufficiency;
8. Carrying into effect the provisions of this chapter.
9. The collection, maintenance and disbursement of the state insurance fund. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1916, ch. 622, in effect June 1, 1916.*)

§ 68. **Technical rule of evidence or procedure not required.**

Commission not bound by rules of evidence and procedure; hearsay evidence competent.—This section, and subdivision 2 of section 67 providing that the Commission shall adopt rules providing for the "nature" of the evidence to be accepted by it, wholly abrogate the substantive law of evidence, the common law, the statute law, the rules of procedure formulated by the courts, and all the technicalities respected by the legal profession. The Commission is authorized by the statute to make its investigation in any manner that it chooses, wholly unfettered by any previous law, and may, under section 68 of the statute, receive hearsay evidence and base their findings thereon. *Carroll v. Knickerbocker Ice Co.* (1915), 169 App. Div. 450, 155 N. Y. Supp. 1.

Evidence insufficient to sustain claim.—The Workmen's Compensation Commission has no authority to make an award in the absence of at least some evidence that the employee met with the injury while he was at work for the specified employer, and as a consequence of something that had a relation to the work of the employer, something done by him or by others while he was so employed. Hence, where a claim is made for the death of an assistant foreman in the employ of the street department of a gas company, who, while sweeping the paving where work was being done, suddenly fell to the street and died some days later, and the autopsy reveals that he received a fracture of the skull from the fall, and that the fall was in all probability due to an attack of cardiac syncope, to which he was

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predisposed, and there is no evidence to indicate that the deceased's fall was due to anything except that while standing in the street he happened to have a sudden attack of cardiac syncope, and there is nothing to sustain a finding that his injury was "accidental" or that it arose "out of" the employment, except that the sudden fainting spell came during working hours, the claim should be dismissed. *Collins v. Brooklyn Union Gas Co. (1916), 171 App. Div. 381, 156 N. Y. Supp. 957.*

§ 75. **Report of commission.**—Annually on or before the first day of February, the commission shall make a report to the legislature, which shall include a statement of the number of awards made by it and the causes of the accidents leading to the injuries for which the awards were made, a detailed statement of the expenses of the commission, the condition of the state insurance fund, together with any other matter which the commission deems proper to report to the legislature, including any recommendations it may desire to make. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1916, ch. 622, in effect June 1, 1916.*)

§ 77. **Expenses of administering commission.**—As soon as practicable after July first, nineteen hundred and seventeen, and annually thereafter, the commission shall ascertain the total amount of its expenses incurred during the preceding fiscal year, in connection with the administration of the workmen's compensation law, and shall thereupon assess upon and collect from each insurance carrier, including the state insurance fund, the proportion of such expense that the total compensation or payments made by such carrier in such year bore to the total compensation or payments made by all insurance carriers. The amounts so secured shall be transferred to the state treasury to reimburse it for this portion of the expense of administering this chapter. (*Added by L. 1916, ch. 622, in effect June 1, 1916.*)

§ 92. **Surplus and reserves.**—Ten per centum of the premiums collected from employers insured in the fund shall be set aside by the commission for the creation of a surplus until such surplus shall amount to the sum of one hundred thousand dollars, and thereafter five per centum of such premiums, until such time as in the judgment of the commission such surplus shall be sufficiently large to cover the catastrophe hazard. The commission shall also set up and maintain reserves adequate to meet anticipated losses and carry all claims and policies to maturity, which reserves shall be computed in accordance with such rules as shall be approved by the superintendent of insurance. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1916, ch. 622, in effect June 1, 1916.*)

§ 93. **Investment of surplus or reserve.**—Any of the surplus or reserve funds belonging to the state insurance fund may, pursuant to a resolution of the commission approved by the superintendent of insurance, be invested in or loaned on the pledge of any of the securities in which deposits of insurance corporations are required to be invested pursuant to section thirteen of the insurance law, or in the public stocks or bonds of any one

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L. 1916, ch. 622.

of the United States, or in bonds and mortgages on improved unencumbered real property in this state worth fifty per centum more than the amount loaned thereon. All such securities or evidences of indebtedness shall be placed in the hands of the state treasurer who shall be the custodian thereof. He shall collect the principal and interest thereof, when due, and pay the same into the state insurance fund. The state treasurer shall pay all vouchers drawn on the state insurance fund for the making of such investments when signed by two members of the commission, upon delivery of such securities or evidences of indebtedness to him, when there is attached to such vouchers a certified copy of the resolution of the commission authorizing the investment. The commission may, upon like resolution approved by the superintendent of insurance, sell any of such securities. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1916, ch. 622, in effect June 1, 1916.*)

§ 94. **Administration expense.**—The entire expense of administering the state insurance fund shall be paid in the first instance by the state, out of moneys appropriated therefor. In the month of July, nineteen hundred and seventeen, and annually thereafter in such month, the commission shall ascertain the just amount incurred by the commission during the preceding fiscal year, in the administration of the state insurance fund, and shall refund such amount to the state treasury. If there be employees of the commission other than the commissioners themselves and the secretary whose time is devoted partly to the general work of the commission and partly to the work of the state insurance fund, and in case there is other expense which is incurred jointly on behalf of the general work of the commission and the state insurance fund, an equitable apportionment of the expense shall be made for such purpose and the part thereof which is applicable to the state insurance fund shall be chargeable thereto. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1916, ch. 622, in effect June 1, 1916.*)

§ 95. **Classification of risks and adjustment of premiums.**

The only way in which a single employer in the state fund can be separately grouped, is where the nature of his business and the degree of risk of injury is such that he, in fact represents a group by himself, subject, however, to the opportunity of other employers coming within its limitations, to be made members of that group; and the only way in which a single employer in the state fund can secure a rate different from that allowed to other employers in such fund of the same group, is through a system of schedule rating as provided in the last sentence of this section. But for dividend purposes, even an employer so rated, still remains in the group in which he is placed, and dividends must be declared as the result of the total experience of the group of which he is a member for the premium term. 6 State Dep. Rep. 476 (1916).

§ 97. **Requirements in classifying employments and fixing and adjusting premium rates.**—*Subd. 3, amended by L. 1916, ch. 622, in effect June 1, 1916, as follows:*

3. If any such accounting show an aggregate balance (deemed by the commission to be safely and properly divisible) remaining to the credit of any class of employment or industry, after the amount required shall have been credited to the surplus and reserve funds and after the payment of all awards for injury or death lawfully chargeable against the same, the commission may in its discretion credit to each individual member of such group, who shall have been a subscriber to the state insurance fund for a period of six months or more prior to the time of such readjustment, and whose premium or premiums exceed the amount of the disbursements from the fund on account of injuries or death of his employees during such period, on the instalment or instalments of premiums next due from him such proportion of such balance as the amount of his prior paid premiums sustains to the whole amount of such premiums paid by the group to which he belongs since the last readjustment of rates. In the event that any member of the group who has heretofore or shall hereafter withdraw would have become entitled to such dividend if he had remained in the fund the commission is empowered to pay the amount of the dividend to such employer.

§ 100. **Withdrawal from fund.**—Any employer may, upon complying with subdivision two or three of section fifty of this chapter, withdraw from the fund by turning in his insurance contract for cancellation, provided he is not in arrears for premiums due the fund and has given to the commission written notice of his intention to withdraw within thirty days before the expiration of the period for which he has elected to insure in the fund; provided that in case any employer so withdraws, his liability to assessments shall, notwithstanding such withdrawal, continue for one year after the date of such withdrawal as against all liabilities for such compensation accruing prior to such withdrawal. (*Re-enacted by L. 1914, ch. 41, and amended by L. 1916, ch. 622, in effect June 1, 1916.*)

§ 106. **Reports of state insurance fund; examination by insurance department.**—The commission shall make reports to the superintendent of insurance concerning the state insurance fund at the same times and in the same manner as is required from mutual employers' liability and workmen's compensation corporations by section one hundred and ninety-two of the insurance law, and the superintendent of insurance may examine into the condition of such state insurance fund at any time, either personally or by any duly authorized examiner appointed by him, for the purpose of determining the condition of the investments and the adequacy of the reserves of such fund. (*Added by L. 1916, ch. 622, in effect June 1, 1916.*)

§ 114. **Interstate commerce.**

The State and Federal Workmen's Compensation Acts should be given a reasonable construction and harmonized when possible, although the State law must give way

§ 114.

Interstate commerce.

to the Federal law where they are antagonistic. *Parsons v. Delaware & Hudson Co.* (1915), 167 App. Div. 536, 153 N. Y. Supp. 179.

The statute properly construed applies to accidental injuries received in interstate as well as intrastate work, except those injuries received while employed in interstate or foreign commerce, for which "a rule of liability or method of compensation has been or may be established by the Congress of the United States." Hence the statute is not violative of the Federal Constitution for attempting directly to regulate or impose a tax or burden on interstate or foreign commerce. *Jensen v. Southern Pacific Co.* (1915), 215 N. Y. 514.

The Federal Employers' Liability Act prescribes the rules under which certain employers are liable to their employees for injuries which result to the latter from negligence. The Workmen's Compensation Law is radically different in principle, purpose, scope and method from the Federal Employers' Liability Act. They do not assume to deal with the same subject-matter. The contention that because a claimant when injured was employed by a railroad company which was then engaged in interstate commerce, the Federal Employers' Liability Act alone measures the claimant's right to recover cannot be sustained. *Winfield v. New York Central and Hudson River R. R. Co.* (1915), 216 N. Y. 284, affg. 168 App. Div. 351, 153 N. Y. Supp. 499.

As to accidents to those engaged in interstate commerce resulting from negligence, which are within the Federal Employers' Liability Act, Congress has assumed to deal with the subject, and, therefore, all state regulations within that sphere must be inoperative. In so far as the separate and distinct field of compulsory insurance against accidents, not the result of negligence by the employers, is concerned, Congress has not assumed to act upon the subject, and until such time as Congress does enter this distinct and separate field, it is open to occupancy by the state, provided only that in occupying it the state does not go beyond the necessities of the case, or unreasonably burden the exercise of the privileges secured by the Constitution of the United States. *Winfield v. New York Central and Hudson River R. R. Co.* (1915), 216 N. Y. 284, affg. 168 App. Div. 351, 153 N. Y. Supp. 499.

The Workmen's Compensation Law should be given a broad and liberal construction in order to carry out the beneficent purpose for which it was enacted, and should be applied to all cases arising in the hazardous employments mentioned, where a Federal statute does not necessarily conflict with it. Since the Federal Employers' Liability Act relates solely to liability on account of negligence, an employee of a railroad company injured without negligence of the company, while working upon its tracks, which were used both for State and interstate commerce, is entitled to compensation under the Workmen's Compensation Law. *Winfield v. New York Central & Hudson River R. R. Co.* (1915), 168 App. Div. 351, 153 N. Y. Supp. 499, affd. 216 N. Y. 284.

Where an employee of a foreign railroad corporation, owning and operating a steamship engaged solely in interstate commerce, was accidentally injured on a steamship in the city of New York, he may sustain a claim under the Workmen's Compensation Act notwithstanding the fact that he may maintain an admiralty proceeding *in rem* for the same injury. While the remedy provided by the Workmen's Compensation Act is a substitute for the common-law remedy, it is in no sense a proceeding *in rem* to enforce a maritime lien and may, therefore, exist concurrently with the remedy in admiralty. *Walker v. Clyde Steamship Co.* (1915), 215 N. Y. 529.

An employee of a foreign railroad corporation, owning and operating a steamship engaged solely in interstate commerce, was killed by an accident while engaged in unloading the steamship, which was berthed alongside a pier in the Hudson river in the city of New York. It was held, that the work in which he

was engaged is classified as "Longshore work" in group 10 of section 2 of the statute, and, therefore, does not fall within group 8, which excepts injuries received in the operation of "vessels of other states or countries used in interstate or foreign commerce when operated or repaired by the company." Hence, the case is not covered by the Federal statute, and an award made by the workmen's compensation commission to the widow of such employee should be affirmed. *Jensen v. Southern Pacific Co.* (1915), 215 N. Y. 514.

A person employed by the Pennsylvania Railroad Company at its terminal in New York city to uncouple cars, who was killed by electricity while uncoupling a local Long Island train after it had arrived at said terminal, was not at the time engaged in interstate commerce, and those dependent upon him are entitled to compensation under the State statute if none of the cars ran outside the State or carried any except local passengers. And this even though they carried baggage destined for another State and the Long Island Railroad Company occasionally sold tickets for points without the State. *Fairchild v. Pennsylvania R. R. Co.* (1915), 170 App. Div. 135, 155 N. Y. Supp. 751.

One employed by an interstate railroad company to relocate in this State a portion of a telegraph system used in connection with its business, may be entitled to an award under the State Workmen's Compensation Act for personal injuries received while so engaged, where the injury was in no way attributable to the negligence of the employer, but was wholly accidental. Such person is not limited to a recovery under the Federal act. *Moore v. Lehigh Valley R. R. Co.* (1915), 169 App. Div. 177, 154 N. Y. Supp. 620.

Repair of car used for interstate traffic; award under State law.—An employee of the Lehigh Valley railroad, an interstate railroad, who was injured while engaged in repairing a car at the shops of said company situated at Buffalo, is entitled to an award under the State Workmen's Compensation Law, although the car which he was repairing was, at times, used in interstate traffic. *Okrzesz v. Lehigh Valley R. R. Co.* (1915), 170 App. Div. 15, 155 N. Y. Supp. 919.

As by the custom of railroad companies a company receiving and transporting freight cars of other companies operating under foreign charters may use any empty car received by it either for local or interstate shipments in its discretion, a State railroad which has possession of an empty car of a foreign company is not engaged in interstate commerce while making repairs thereto in its own shops. And this is true although after the repairs the car was actually used for interstate rather than for domestic commerce. Hence, where an employee was injured during such repairs an award may be made to him under the State Workmen's Compensation Act. *Parsons v. Delaware & Hudson Co.* (1915), 167 App. Div. 536, 153 N. Y. Supp. 179.

Election of remedies.—*It seems*, that if an employee receives compensation either under the Federal act or under the State Workmen's Compensation Law, it may be held that he has received pay for the injury which he has sustained upon a remedy chosen by him, and that his election of one of such remedies prevents him from resorting to the other. *Winfield v. New York Central & Hudson River R. R. Co.* (1915), 168 App. Div. 351, 153 N. Y. Supp. 499.

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